HOBSON V. WILSON

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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION BY DEFENDANT CLARENCE M. KELLEY FOR JUDGMENT ON THE PLEADINGS

Defendant Clarence M. Kelley, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Kelley relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

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Clarence M. Kelley

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant Clarence M. Kelley for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant Clarence M. Kelley.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT CLARENCE M. KELLEY FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced against defendant Clarence M. Kelley, as well as against other present and former officials of the Federal Bureau of Investigation and the Metropolitan Police Department, on July 16, 1976. At the time this action was filed, defendant Kelley was Director of the Federal Bureau of Investigation, having been appointed to that position in July, 1973, and he was sued individually and in his official capacity. Defendant Kelley resigned as Director in February, 1978, whereupon the new Director, William H. Webster, was substituted in his official capacity pursuant to Rule 25(d), Federal Rules of Civil Procedure. Defendant Kelley remains a defendant in his individual capacity. He now moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against defendant Kelley. No specific act or occurrence is alleged. The claims against defendant Kelley consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs;

(2) electronic surveillance without judicial authorization;

(3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

In April, 1981, plaintiffs responded to discovery requests by the federal defendants, including defendant Kelley, the purpose of which was to determine the specific acts plaintiffs complained of and the specific injuries they suffered. Each of the individual and organizational plaintiffs identified only one category of activity in which defendant Kelley was allegedly implicated.

The interrogatory to each plaintiff was the following:*/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

With only slight variation, each plaintiff described the "acts" in which defendant Kelley was allegedly implicated as follows:**/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials, or premises, and receiving from those informants and keeping information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to noninformant associates of mine.

The plaintiffs further state that this activity occurred between January 1, 1964, and July 16, 1976, and that defendant Kelley supervised or directed the commission of these acts.

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*/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

**/ The responses in which this answer occurs are: Plaintiff Abbott, No. 1.C.; plaintiff Bloom, No. 1.E.; plaintiff Waskow, No. 1.H.; plaintiff Eaton, No. 1.C.; plaintiff Pollock, No. 1.E.; plaintiff Hobson, No. 1.C.; plaintiff Booker, No. 1.C.; plaintiff Washington Peace Center, No. 1.C.; and plaintiff Washington Area Women Strike for Peace, No. 1.E.

A number of issues raised by these responses are significant.

(1) The dates January 1, 1964, to July 16, 1976, comprehend a period not alleged in the Amended Complaint, which is limited to the period 1968 to 1973.

(2) Defendant Kelley was not an official of the Federal Bureau of Investigation until July, 1973; consequently, only a limited portion of the allegation in the responses could apply to him and, depending on the meaning of the phrase "1968 to 1973", not more than six months of the allegation as stated in the Amended Complaint could apply to him.

(3) Plaintiffs have no factual basis for the breadth of this allegation. Nothing in the record of this action or in the responses by plaintiffs to the federal defendants' discovery demands shows that defendant Kelley personally participated in, directed, or even knew about any activity affecting any plaintiff. More importantly, no plaintiff describes a single act or event in which defendant Kelley was involved and for which he would be personally liable, even though that is precisely what the interrogatory requested and even though each plaintiff has had the opportunity for and benefit of extensive discovery.

Such a generalized allegation would not constitute sufficient pleading if set forth in a complaint. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs now, however, have had full opportunity to discover such details, and their failure to link defendant Kelley with any specific instance of misconduct constitutes a failure to state a claim against him which entitles them to relief. See Lander v. Morton, 518 F.2d 1084 (D.C. Cir. 1975); Kite v. Kelley, 546 F.2d 334 (10th Cir. 1976).

(4) Finally, the allegation expressed in responses to interrogatories does not set forth a claim upon which plaintiffs may be granted relief. The turgidity of the plaintiffs' statement quoted above tends to obscure the meaning, but the basic allegation is that information concerning plaintiffs was obtained by informants and placed in Federal Bureau of Investigation files.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution . . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S. 745, 749 (1971).

In the Memorandum Opinion of November 9, 1979, this Court agreed with the foregoing proposition. (Slip Opinion, at 8). In addition, this Court found that plaintiffs had not made sufficient factual allegations to support a determination that their alternative theories of wrongful surveillance*/ by the defendants stated a cause of action upon which relief could be granted, but the Court directed that the action proceed so that the issues could be further clarified. (Slip Opinion, at 9). Even though plaintiffs have now had full opportunity for discovery, their factual statements regarding their claim against defendant Kelley remain insufficient. No plaintiff describes or alleges any objective chill of constitutionally protected activity, suppression of protected freedoms, or disruptive acts designed to defeat the exercise of free speech and assembly rights.

On the basis of the facts described by plaintiffs, they fail to state a claim against defendant Kelley upon which relief may be granted.

Conclusion

For the foregoing reasons, defendant Clarence M. Kelley's motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
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Brook Hedge
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Attorneys for defendant
Clarence M. Kelley

*/ "(1) excessive surveillance of public as well as private meetings which caused an objective chilling effect; (2) surveillance conducted for the purpose of invading privacy and suppressing protected freedoms; and (3) use of informants and FBI agents to engage in disruptive acts designed to defeat the exercise of free speech and assembly rights." Memorandum Opinion, November 9, 1979, at 9.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant Clarence M. Kelley For Judgment On The Pleadings and accompanying Memorandum and Order.

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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	RECEIVED SEP 19 1977 Civil Action No. 76-1326

MOTION BY DEFENDANT HILMER KREBS FOR JUDGMENT ON THE PLEADINGS

Defendant Hilmer Krebs, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Krebs relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant Hilmer Krebs for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant Hilmer Krebs.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT HILMER KREBS FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced on July 16, 1976. Hilmer Krebs was added as a defendant on December 7, 1977. During a portion of the time pertinent to the subject matter of this action, defendant Krebs was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C. Field Office. Defendant Krebs moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

The Amended Complaint makes no specific allegation against defendant Krebs. No specific act or occurrence is alleged. The claims against defendant Krebs are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Krebs, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, six of the plaintiffs provided responses implicating defendant Krebs.

The interrogatory to each plaintiff was the following:*/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Plaintiffs Abbott, Bloom, Waskow, Eaton, Hobson, and Booker stated that defendant Krebs committed the following act between January 1, 1964, and July 16, 1976:**/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

Plaintiffs Abbott, Bloom, and Waskow also state that between May, 1968, and April, 1971, defendant Krebs committed the following acts:***/

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left.

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*/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

**/ Responses by plaintiff Abbott, NO. 1.C.; Plaintiff Bloom, No. 1.E.; Plaintiff Waskow, No. 1.H.; Plaintiff Eaton, No. 1.C.; Plaintiff Hobson, No. 1.C.; Plaintiff Booker, No. 1.C. The answers differ slightly but are fundamentally the same.

***/ Responses by plaintiff Abbott, No. 1.A. and No. 1.B.; Plaintiff Bloom, No. 1.A. and No. 1.B.; Plaintiff Waskow, No. 1.A. and No. 1.D.

> Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy.

Plaintiffs Eaton, Hobson, and Booker make basically the same statements but allege the activity occurred from August, 1967, to April, 1971.*/

Plaintiffs Abbott, Waskow, and Hobson demand no damages from defendant Krebs.**/ Plaintiffs Bloom, Eaton, and Booker demand substantial damages from defendant Krebs.***/

A. Plaintiffs' Responses To Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The so-called "acts" described by plaintiffs are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discover such details, so that their failure to link defendant Krebs with any specific instance of misconduct and to describe the consequences of such conduct to them constitutes a failure to state a claim against him which entitles them to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

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*/ Responses by plaintiff Eaton, No. 1.A. and No. 1.B.; Plaintiff Hobson, No. 1.A. and No. 1.B.; Plaintiff Booker, No. 1.A. and No. 1.B.

**/ Responses by plaintiffs Abbott, Waskow, and Hobson, No. 4 and 5.

***/ Responses by plaintiffs Bloom, Eaton, and Booker, No. 4 and 5.

B. The Actions Described By Plaintiffs Do Not State A Cause of Action Upon Which Relief May Be Granted

The first allegation quoted above is that information concerning these plaintiffs was obtained by informants acting at defendant Krebs' direction.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S 745, 749 (1971).

None of the plaintiffs describes or alleges any act by defendant Krebs which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, and none describes any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9. The plaintiffs'

factual statements regarding their claims against defendant Krebs are thus insufficient to state a claim upon which relief may be granted.

Plaintiffs also state that defendant Krebs participated in a conspiracy to deprive each of them of constitutional rights. Conspiracy alone, however, does not give rise to a cause of action. To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to a plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiffs describe no such overt act; consequently their allegation of conspiracy does not state a claim against defendant Krebs upon which relief may be granted.*/

In addition, plaintiffs state that defendant Krebs acquired and kept information concerning their private and first amendment activities. Plaintiffs describe no act and make no allegation indicating that the method of acquisition violated any legal or constitutional right or that the information was used in any manner to cause them injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peace Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

Conclusion

For the foregoing reasons, defendant Hilmer Krebs' motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

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Hilmer Krebs

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant Hilmer Krebs For Judgment On The Pleadings and accompanying Memorandum and Order.

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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

RECEIVED SEP 19 1981

MOTION BY DEFENDANT ROBERT KUNKEL FOR JUDGMENT ON THE PLEADINGS

Defendant Robert Kunkel, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Kunkel relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant Robert Kunkel for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted, and it is further

ORDERED that judgment be entered in favor of defendant Robert Kunkel.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT ROBERT KUNKEL FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced against defendant Robert Kunkel on July 16, 1976. During the period July, 1970, to October, 1972, defendant Kunkel was Special Agent in Charge [SAC] of the Federal Bureau of Investigation's Washington, D.C., Field Office. (Amended Complaint, ¶21). Defendant Kunkel moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against defendant Kunkel. No specific act or occurrence is alleged. The claims against defendant Kunkel are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Kunkel, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised or directed the commission of the act.*/

In answering the discovery demands, every plaintiff stated that defendant Kunkel had supervised or directed several acts that had injured each of them and for which each was entitled to substantial damages.

In order to recover damages from defendant Kunkel, each plaintiff must demonstrate that he personally participated in an act which caused judicially cognizable injury to the plaintiff. Landers v. Morton, 518 F.2d 1084 (D.C. Cir. 1975); Kite v. Kelley, 546 F.2d 334 (10th Cir. 1976) (Special Agents in Charge of FBI Field Office held not liable where there was no evidence to indicate they had been personally involved in actions affecting plaintiff).

Although plaintiffs frequently state in their discovery responses that defendant Kunkel supervised or directed actions allegedly affecting them, close examination shows that they fail to state a claim against him which entitles them to relief. Indeed, examination of the responses establishes that the frequent repetition of defendant Kunkel's name is due more to plaintiffs' rote manner of answering interrogatories than to any analysis of the facts. For example, every plaintiff states that defendant Kunkel directed or supervised activity which occurred in 1969, including disrupting housing arrangements by the National Mobilization Committee for persons demonstrating in connection with the presidential inauguration, interfering with the National Mobilization Committee's radio communication system at the inauguration demonstrations, wiretapping the offices of the National Mobilization Committee, sending forged letters to interfere with the first amendment rights of the National

*/ Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

Mobilization Committee and the Black United Front, and anonymously mailing copies of newspaper articles critical of the New Left.*/ These allegations, however, have absolutely no basis in fact, because, as established by the pleadings in this action, defendant Kunkel did not become Special Agent in Charge of the Washington Field Office until July, 1970.**/ It is evident that in answering the interrogatories plaintiffs made no effort to identify a factual basis for their claims against defendant Kunkel.

The plaintiffs also state that defendant Kunkel participated in a conspiracy to interfere with their constitutional rights, participated in the acquisition and retention of information concerning them, directed informants to acquire information from and about them, and directed informants to disrupt the constitutionally protected activities of various organizations with which plaintiffs were associated.***/ None of these allegations, however, include descriptions of specific acts of misconduct, and plaintiffs fail to link defendant Kunkel with any specific instance of misconduct. With regard to these allegations, therefore, plaintiffs fail to state a claim against defendant Kunkel upon which relief may be granted.****/ See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972); Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Fifth Avenue Peace Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973).

Putting aside the obviously false statements described above regarding defendant Kunkel and the statements which are insufficient to state a claim upon which relief can be granted, only two

*/ See, e.g., responses by plaintiff Abbott, Nos. 1.E., 1.F., 1.G., 1.H., 1.I.; Responses by plaintiff Eaton, No. 1.E.

**/ See, e.g., responses by plaintiff Waskow, Nos. 1.A., 1.D., 1.H., 1.I.

***/ Amended Complaint, ¶21; Answer by Defendant Robert Kunkel, et al., to Amended Complaint, ¶21.

****/ See Memorandum of Points and Authorities in Support of Motion by Defendant Robert Feuer for Judgment on the Pleadings, filed September 16, 1981, at 3-5, for fuller argument on these propositions.

plaintiffs, Bloom and Waskow, describe specific acts in which defendant Kunkel allegedly participated. Plaintiff Bloom states that defendant Kunkel supervised or directed defendant Joseph Keller's contact with plaintiff Bloom's employer.*/ He also states that defendant Kunkel supervised or directed the receipt and retention by the FBI of materials allegedly stolen by an officer of the Metropolitan Police Department from an office building at 1029 Vermont Avenue, N.W.**/ Plaintiffs have no factual basis upon which to establish that defendant Kunkel participated in either of these alleged events. In any event, the act of defendant Keller did not constitute an infringement of constitutional rights.***/ Furthermore, even assuming that the theft of materials occurred as alleged, there is no probative information to establish that anyone in the Federal Bureau of Investigation, particularly defendant Kunkel, knew about it.

Defendant Waskow states that defendant Kunkel supervised or directed defendant Terry T. O'Connor in the receipt and retention of photocopies of mail allegedly stolen by an informant from plaintiff Waskow and the Institute for Policy Studies.****/ Again, plaintiff Waskow has no basis upon which to state that defendant Kunkel participated in any such act. In any event, this particular claim is barred by the statute of limitations, 12 D.C. Code § 301(8).*****/

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*/ Responses by plaintiff Bloom, No. 1.L.

**/ Responses by plaintiff Bloom, No. 1.M.

***/ See Memorandum of Points and Authorities in Support of Motion by Defendant Joseph Keller for Judgement on the Pleadings, filed September 16, 1981, which deals in detail with this matter.

****/ Responses by plaintiff Waskow, No. 1.G.

*****/ See Memorandum of Points and Authorities in Support of Motion by Defendant Terry T. O'Connor for Judgment on the Pleadings, filed September 16, 1981, which deals with this matter.

Conclusion

For the foregoing reasons, defendant Robert Kunkel's motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant Robert Kunkel For Judgment On The Pleadings and accompanying Memorandum and Order.

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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	RECEIVED SEP 1 9 [illegible] Civil Action No. 76-1326

MOTION BY DEFENDANT PAUL D. LAMBERTH FOR JUDGMENT ON THE PLEADINGS

Defendant Paul D. Lamberth, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Lamberth relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

ORDER

This cause having come before the Court on motion by defendant Paul D. Lamberth for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant Paul D. Lamberth.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION BY DEFENDANT
PAUL D. LAMBERTH FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced on July 16, 1976. Paul D. Lamberth was added as a defendant by the Amended Complaint filed December 7, 1977. During a portion of the time pertinent to the subject matter of this action, defendant Lamberth was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C. Field Office. Defendant Lamberth moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

The Amended Complaint makes no specific allegation against defendant Lamberth. No specific act or occurrence is alleged. The claims against defendant Lamberth are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Lamberth, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, only two plaintiffs, Bloom and Waskow, provided responses implicating defendant Lamberth.*/

The interrogatory to each plaintiff was the following:**/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Both plaintiff Bloom and plaintiff Waskow stated that defendant Lamberth committed the following act between January 1, 1964, and July 16, 1976:***/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

Plaintiffs Waskow and Bloom also state that between May, 1968, and April, 1971, defendant Lamberth committed the following acts:****/

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left.

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*/ Plaintiffs Sammie Abbott and Tina Hobson stated in their responses that they believed they were entitled to damages from defendant Lamberth; however, neither of them describes any act in which defendant Lamberth was allegedly involved. See plaintiff Sammie Abbott's responses, served April 24, 1981, and plaintiff Tina Hobson's responses, served April 28 and July 24, 1981. Having made no claim that defendant Lamberth committed any wrongful act, they are not entitled to damages from him.

**/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

***/ Responses by plaintiff Bloom, No. 1.E.; Responses by plaintiff Waskow, No. 1.H.

****/ Responses by plaintiff Waskow, No. 1.A. and No. 1.D.; Responses by plaintiff Bloom, No. 1.A. and No. 1.B.

> Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy.

Plaintiffs Waskow and Bloom demand substantial damages from defendant Lamberth.*/

A. Plaintiffs' Responses to Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The so-called "acts" described by plaintiffs Bloom and Waskow are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discover such details, so that their failure to link defendant Lamberth with any specific instance of misconduct and to describe the consequences of such conduct to them constitutes a failure to state a claim against him which entitles them to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

B. The Actions Described By Plaintiffs Waskow And Bloom Do Not State A Cause of Action Upon Which Relief May Be Granted

The first allegation quoted above is that information concerning plaintiffs Bloom and Waskow was obtained by informants acting at defendant Lamberth's direction.

*/ Responses by plaintiff Waskow, No. 4 and 5; Responses by plaintiff Bloom, No. 4 and 5.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution . . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S. 745, 749 (1971).

Neither plaintiff Bloom nor plaintiff Waskow describes or alleges any act by defendant Lamberth which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, and neither describes any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9. The plaintiffs' factual statements regarding their claims against defendant Lamberth are thus insufficient to state a claim upon which relief may be granted.

Plaintiffs Waskow and Bloom also state that defendant Lamberth participated in a conspiracy to deprive them of their constitutional rights. Conspiracy alone, however, does not give rise to a cause of action. To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to a plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiffs Waskow and Bloom describe no such overt act; consequently the allegation of conspiracy does not state a claim against defendant Lamberth which relief may be granted.*/

In addition, plaintiffs Waskow and Bloom state that defendant Lamberth acquired and kept information concerning their private and first amendment activities. Plaintiffs describe no act and make no allegation indicating that the method of acquisition violated any legal or constitutional right or that the information was used in any manner to cause them injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peach Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

Conclusion

For the foregoing reasons, defendant Paul D. Lamberth's motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
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*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion by Defendants Paul D. Lamberth For Judgment On The Pleadings and accompanying Memorandum and Order.

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	RECEIVED SEP 1 9 1981
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MOTION BY DEFENDANT TERRY T. O'CONNOR
FOR JUDGMENT ON THE PLEADINGS

Defendant Terry T. O'Connor, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant O'Connor relies upon the record of this action, the attached exhibits, and the attached memorandum of points and authorities.

Respectfully submitted,

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Special Agent for the FBI

Robert Wall

I

In May of 1965, after serving as a naval officer for several years, I arrived in Washington, D.C., to begin my training for the position of Special Agent with the Federal Bureau of Investigation. I was both naïve and apolitical. I thought of myself as an intense idealist and was convinced that the FBI was an organization in which personal integrity was highly valued. To me the organization was above all a protector of the innocent public and only secondarily the relentless pursuer of wrongdoers. In short, I was an ideal candidate for the job. I would not question; I would simply learn to do as I was told, content to believe that the FBI would never direct me wrong.

This belief managed to survive my first two years in the bureau, during which I worked on criminal investigations and government job applications. It was when I was assigned to work in Internal Security in Washington, D.C., that I began to have my first serious doubts about the integrity of the organization, its motives, and its goals.

The Washington Field Office is the operating arm of the FBI in Washington, D.C. Like other field offices, we reported to the bureau's Washington headquarters, but our office was one of the largest. Assigned to the office were between five and six hundred agents, broken up into squads of from a handful to fifty or sixty. Two squads worked only on applications for government jobs and five or six handled criminal investigations. In addition, there were nine squads assigned to do "security" work. One of those nine was charged with investigating all of the various individuals and organizations that allegedly threatened the national security or that advocated the overthrow of the United States government by force or violence.

It was to this squad that I was assigned in May, 1967, shortly before my second anniversary as an agent. I looked forward to the assignment because anything would have looked good to me after a few months spent investigating applicants for government jobs. But I realized that all my FBI experience until then had in no way prepared me for work in security. During the training course for new agents which I had undergone in 1965, instruction on "security" meant listening to stories of the bureau's great accomplishments, e.g., the capture of the Nazi espionage teams that landed in Florida and New England during World War II, and, of course, the apprehension of Colonel Rudolph Abel. We learned also that the bureau had been able to break up the Ku Klux Klan and the Communist Party.

But nothing in this training was meant to define how the FBI views national security or threats to it. We were told instead that only a handful of experienced and carefully picked agents, the "cream of the crop," were selected to work in this most difficult and challenging field. Furthermore, information about the security work of the FBI is supplied on a "need to know" basis only, and there was no immediate need to tell us much more.

Later, in September, 1967, I was sent to the FBI National Academy in Quantico, Virginia, for a two week

"The New York Review of Books"

January 27, 1972

Exhibit A

in-service training in "Basic Security." But this consisted mainly of an elaborate rehash of the noninformation we had received during new agents training. Nonetheless, I was eager to learn more about the work of the squad and the men assigned to it.

The heyday of this squad was during the late Forties and early Fifties when those who were called Communists, pinkos, reds, Commie symps, fellow travelers, and sundry other names were being "discovered" and routed from all levels of American society. By the time I arrived on the scene the squad was jokingly referred to by some as "the graveyard," owing to the advanced age of some of the agents and the motionless manner in which they conducted their investigations now that their prime had passed. Of the dozen or so agents on the squad, all were near or past their twentieth year of service in the bureau. Most of them had spent the better part of their careers on the squad as "red chasers."

Each of the older agents would willingly relate how he had shared in the FBI's successful smashing of the Communist Party. The stories most often had the flavor of back fence gossip, for they concerned not some insidious plot to overthrow the government, but rather the clandestine love affairs of various Party members.

One agent told me that he spent twelve years of his bureau service in "lookouts." A lookout is a place where an agent can sit (sometimes stand, kneel, lie, or squat, but usually sit) unobserved and look out to see what the person under investigation is doing. One of these lookouts which he recalled fondly was in a hotel room across an airshaft from a room rented by a Communist Party "angel" in a downtown Washington, D. C., hotel. In fact this agent had spent some years of his life peering across the airshaft at his wholly innocuous subject. The blinds in the room he watched were never closed. He liked to tell of the lively sexual activities he had seen. He seemed to think that, in the absence of other evidence, they confirmed that something subversive was taking place.

Another agent told of months spent watching the suburban home of a suspected "Commie" where the only information of value obtained was that after the suspect left for work in the morning his wife would signal to her lover, who lived two streets away, by switching on the back porch light. The lover would then jump in his car and race over for a morning visit. The agent's report indicated the time elapsed from the moment when the porch light went on until the lover arrived panting at the door, and then the length of his stay. The lover was not known to be a member of the Party, but was suspected of being a sympathizer, which may have been the justification used by the agents to account for the time they spent watching that particular house.

By 1967, the Communist Party in Washington, D. C., had only three members remaining. The main function of the squad then was to verify the residence and employment of the persons who once had been subjects of FBI investigation and who were still considered dangerous enough to keep track of, even though they were no longer active with the Party or any other subversive group, for that matter. Every three, six, nine, or twelve months the files on these persons

would be reopened and assigned to an agent on the squad who would make certain that the individual still lived at the same address and worked at the same job.

To accomplish this task, the agent could use several methods. He could personally observe the subject at his home and follow him to work. Or he could request the agents handling one of the three remaining informants familiar with former Party members to ask the informants about the man in question. The latter method was usually chosen since it would eliminate any real work for the agent. After the informant had reported, the case could then be closed again. In closing the case, the agent could either certify that the subject was still worthy of the bureau's attention or try to give him a lower priority, thereby lengthening the interval before the file had to be reopened. It was simpler and required much less paperwork to certify that the subject still needed watching. Thus the investigations of hundreds of perfectly harmless people continued on through the years.

II

By 1967, the antiwar movement was growing from its lean beginnings to a movement of national significance. The response of the bureau was consistent with its history. It determined that the movement was a part of the larger Communist conspiracy to overthrow the United States government. Having decided this, the bureau set about to investigate the movement to show the existence of the conspiracy.

Proof sufficient to satisfy the bureau was readily available. For example, it was noted that among the thirty-five to forty thousand persons who took part in the march on the Pentagon in October, 1967, approximately twenty persons who had once been named as members, suspected members, or sympathizers of the Communist Party were reported to be in the crowd. A few among them had actually assisted in organizing the march. Although the bureau always insists that it neither draws conclusions nor makes recommendations from the facts that it gathers, the FBI report on the march on the Pentagon was leaked to the press and its impact was obvious: the thousands who marched to protest the war in Southeast Asia were publicly labeled as mere pawns in a Communist master plan to spread dissent throughout the nation. They had been duped into giving aid and comfort to the enemy and demoralizing our fighting men.

Had the bureau believed its own propaganda, it would have investigated only the "Communist agitators" in the antiwar movement. Instead we were directed to investigate all the leaders in all the local peace groups and to determine among other things the source of any money used to finance the movement. From there it was a simple step to the investigation of anyone connected to the peace movement in any way. The number of investigations was limited only by the time available and the problem of distinguishing the organizers and leaders of mass rallies from the passive followers.

To deal with the peace movement the FBI followed its usual practice of planting informants. It was easy to recruit young people to infiltrate the antiwar organizations and other groups in the so-called "New Left" since large numbers of volunteers were needed to hand out leaflets, run mimeo machines, answer phones, stuff envelopes, and similar chores connected with political

organizing. All one of our FBI informants needed to do was walk into the office and state briefly that he was opposed to the war and wished to volunteer his services. He would seldom be challenged to prove his allegiance to the movement. Then, with little additional effort, he had access to mailing lists, names of contributors, copies of leaflets and handbills, and was able to report in detail on any organizational meetings that might take place.

Since an organization gave an informant a convenient base from which to operate, the bureau tried to place informants in all the organizations likely to participate in any mass march or demonstration. Then if a coalition of groups was formed to plan a large rally, at least one informant would, we hoped, be among those selected to represent a group when the coalition met to plan its activities. Frequently this was the case.

The informants were always directed to look especially for any indication that violence was being planned by any group or individual within a group. This was the main rule by which the bureau justified its infiltration of these political organizations, although during my three years working on radical groups I never found any evidence that would lead to a conviction for criminal violence.

But the bureau also had an active counterintelligence program which was titled "Cointelpro-New Left." This program was designed to develop means to thwart and undermine the activities of any organization that fell into the category of "New Left." A frequent tactic was to leak stories to the press and television shortly before any mass march or rally. This was easy enough to do. Agents in our offices would write often fanciful press releases warning that violence was expected on the day of the rally, or that the organizers of the march were in contact with Hanoi, or that some known Communists were active in organizing the march. Our superiors in the Internal Security Division at FBI headquarters would then pass on the information to conservative newspapers, which published it immediately. The purpose of such stories was not only to influence the general public but to scare away those whose commitment was weak and thereby reduce the number of persons who might otherwise attend.

Another purpose of the program was to create dissent among the various groups involved in the new left to prevent them from working together. In one case we addressed a letter to the leaders of the National Mobilization Committee (NMC) which said that the blacks of Washington, D. C., would not support the upcoming rally of the NMC unless a twenty thousand dollar "security bond" was paid to a black organization in Washington. At the same time we instructed some informants we had placed in the black organization to suggest the idea of a security bond informally to leaders of the organization. The letter we composed was approved by the bureau's counterintelligence desk and was signed with the forged signature of a leader of the black group. Later, through informants in the NMC, we learned that the letter had caused a great deal of confusion and had a significant effect on the planning for the march.

I should stress that such "counterintelligence" activities were carried on frequently, although some were quite absurd. For example, some of the agents in our office tried to confuse peace demonstrations by such col-

legiate tactics as handing out leaflets giving misleading information about the time and place when the marchers were supposed to meet.

The FBI claims to be a nonpolitical organization and asserts that it is not a national police force. But in its intelligence and counterintelligence work on the new left it was engaging in activity that clearly was political. Moreover, in trying to suppress and discourage a broad-based national political movement, it acted as a national political police.

III

The FBI has always been divided about college campuses. It wants to know what is happening on the campus, yet it is afraid of being charged with interfering with academic freedom. When the antiwar students began challenging the legitimacy of the Reserve Officers Training Corps (ROTC), the propriety of secret military research projects in colleges and universities and the loyalty and morality of the draft, they turned their campuses into centers of political activity.

The bureau's first response to this student activism had a cautious note. We were instructed to investigate to determine who was responsible for the demonstrations and uprisings on the campuses, on the theory that they were organized by outside agitators traveling around the country, but not to conduct investigations on campus. We were told to plant informants in violence-prone student groups but not to use students themselves as informants. Then as campus activity increased we got the green light to recruit students again but were warned to choose only those who were "mature" and reliable. Those students selected were to be admonished strongly that the bureau was not interested in "legitimate campus activity" (a term as definable as "New Left").

I was understandably somewhat anxious when in November, 1967, I was assigned the case titled "Students for a Democratic Society (SDS)." Here was the organization that the bureau had singled out among all the other young activist groups for special attention. I was told that I had to prepare a comprehensive report on all SDS activities in the Washington, D. C., area in less than a month. Every campus SDS chapter was to be identified, as were the names and backgrounds of all officers of the various groups, the number of members in each chapter, the activities of each group, including especially any activity where violence or destruction of property took place.

The agent previously assigned to the case assured me that a brief letter to the bureau would suffice since there was no significant SDS activity in Washington, D. C., a fact that he had dutifully reported three times in the preceding year. (This particular agent was at the time moving up the ladder of bureau success to a supervisory position and I felt certain that his astute handling of the SDS case was largely responsible.)

With very little effort I was able to learn that there were already four campus SDS chapters in the city and an SDS regional office had just been

set up. Realizing that it would be impossible in the time remaining to compile all the information demanded by the bureau, I chose to imitate my predecessor and reported that there was no significant SDS activity in the Washington, D. C., area. Shortly thereafter, when the squad was beefed up, I arranged to have the SDS case reassigned to one of the newcomers.

The bureau's ambivalence regarding campus unrest was apparent when the Washington Field Office received a request from then Assistant Director William Sullivan to analyze the activity on campuses, point out the causes, and recommend the appropriate FBI policy for dealing with student movements. Since our squad was closest to the problem, the job of preparing the position paper was turned over to us. Our squad supervisor elected to assign the task to an older agent who had recently been assigned to the squad. This agent had little experience with college matters but had as yet been assigned few cases and had more time available. He also had a reputation for being able to "write well," that is, to say what the bureau wanted to hear in the language to which it was accustomed.

When I learned of the choice I was disturbed. The agent chosen, if described by a friend, would have been called an extreme conservative. In the banter of the office I had hung the label "fascist pig" on him. He in turn called me the "Father Groppi" of the office, or "Grop" for short. I knew that he saw a conspiracy in every campus demonstration and felt that swifter police action was the first and best answer to any problem of disruption by college students. So I knew what tack he would take.

At this point I was still naïve enough to believe that the bureau was amenable to change and I saw this paper as an opportunity to "affect the bureau from within." So I went to my supervisor and asked for his permission to take over the assignment of preparing the paper for Sullivan. He refused because, in his words, "You're too young to place the SDS in proper historical perspective with the old guard Communist organizations." Undismayed, I "borrowed" the rough draft of my colleague's paper and proceeded to draft a reply and counterproposal. In essence I contended that university administrators needed to re-evaluate the role of the university in our society and take the initiative away from radical agitators by instituting needed changes before the demand for these changes became the rallying point for student discontent.

I concluded that if university administrators could recognize the issues behind the student uprisings, meet with student representatives, and be willing to compromise, they would generally be able to avert destructive confrontation. I recommended that the bureau keep its hands off the universities, even those that had already suffered disruption, because the FBI had no legal justification to intrude; any intrusion would, moreover, be taken by students as an indication of attempted repression by federal authorities.

When I dropped my paper on the supervisor's desk, he handled the situation with the skill of a diplomat. Rather than choose between the papers, he gave both to a third agent to prepare a compromise paper to be presented to Sullivan, setting out the principal points on both sides of the issue. He promised also that I would have the opportunity to make an oral presentation to Sullivan at a later date.

About two weeks later, I returned to the office unexpectedly in mid-morning to discover that a meeting with Sullivan had been arranged at 1 P.M. that day. Angry at what appeared to be an attempt to keep me out, I went to the Coordinating Security Supervisor (my supervisor's supervisor) who had originally received the request from Sullivan that set the whole paper-writing flurry in motion. In his smooth Dixie manner he assured me that no slight had been intended. I had not been invited to the meeting merely because of an administrative oversight. Certainly I'd be allowed to have my say.

It seemed obvious to me then that they did not want me to attend the meeting but they didn't want to be too obvious about it. So I spent some time preparing an oral argument while I awaited the one o'clock meeting. At 12:45, just as I was bringing my shoes to a new luster, my phone rang. The Coordinating Supervisor on the other end advised me that unfortunately Mr. Sullivan's office had only four chairs for visitors and since I had been the last to request a part in the presentation and would be the fifth person, there was no choice but to exclude me. He tried to calm me with lavish praise for my initiative and willingness to tackle difficult problems, but he managed only a hollow laugh when I suggested that I'd accept standing room.

I was certain that my exclusion was just another example of how people on the lower levels of a bureaucracy act as a buffer for those higher up the ladder. They decided what the man at the top wanted to hear and they gave him just that. They had heard and read Mr. Hoover's statements that the SDS was a subversive group that traveled about the country seeking to destroy the institutions of higher learning and they could not make a presentation that deviated from that line.

The final result was an order directing intensified investigations of student agitators and expanded "informant penetration" of campus SDS groups. Predictably, the informants reported the names of hundreds of students who had done no more than say they were interested in SDS or had dropped in at a meeting. Our Washington squad alone opened dozens of cases on freshmen college students who attended orientation sessions sponsored by SDS on Washington, D. C., campuses. Soon we had so many new cases that we had to request additional agents to handle this new "threat to national security."

IV

While we were investigating antiwar groups and student activists, the squad also handled what were called "Racial Matters." This category was an absurdly and frighteningly broad one. Investigations on almost anything done by or for black people could be opened simply by labeling it a Racial Matter. Here, for example, are some of the "cases" we investigated:

A group of teen-agers from the ghetto areas of Washington, D. C., who marched to the city council chambers and demanded restoration of funds for summer jobs for ghetto youth.

--Two busloads of steelworkers who picketed the Department of Labor to protest discriminatory practices at the Bethlehem Steel Sparrow's Point (near Baltimore) plant.

A group of high-school students who staged a protest in their school cafeteria complaining that the food was not fit for human consumption.

Two members of the Student Nonviolent Coordinating Committee (SNCC) who opened a bookstore on 14th Street in northwest Washington.

The FBI quickly responded with an investigation titled "Drum and Spear Bookstore, Racial Matter."

When the poor people's march was organized to dramatize the plight of the poor in our nation and a camp was set up near the Washington Monument, this was a Racial Matter. More logically perhaps, investigations of the Ku Klux Klan, the American Nazi Party, and similar groups were also Racial Matters.

Clearly the bureau had no rational criterion for opening these investigations. The only consistent pattern that I found was that if an individual or group is black and does something to gain attention it is likely to be investigated.

Our guide to Racial Matters at the field office was the early edition of the Washington *Post*. A typical news item would read: "Police arrested six persons early this morning when a crowd gathered as detectives of the Metropolitan Police Department were attempting to arrest a suspected narcotics peddler at the corner of 14th and U Streets, N.W. Some rocks and bottles were allegedly thrown at police," etc. Inevitably, when such a story appeared, we would receive a call from the supervisor of the Racial Desk in bureau headquarters asking what we knew about the incident. It was his firm conviction that incidents of this type were a manifestation of the conspiracy by blacks to take over their community by driving out the police.

So that we would not be embarrassed when the supervisor called, it became standard practice for one of the early arrivers in the office to scan the paper for articles like the one above. He would clip the item, call the precinct to verify the names of the persons arrested, and then paraphrase the news item in a teletype message to bureau headquarters, advising them that we were following the incident and would report any further developments. A month or two later, the agent to whom the case was assigned would close it with a letter stating that the incident was apparently spontaneous and not part of a conspiracy, and giving an estimate of the damages, the names of those arrested, and the background of those who already had records in FBI files.

Often the supervisor on the Racial Desk at the bureau would request specific information about a case under investigation by the field office. The agent to whom the Drum and Spear Bookstore case was assigned received such a request. For months he had been investigating the bookstore, watching its operations, checking out its owners, looking into its bank records, trying to ascertain the source of its funds. He had found nothing connected with crime, conspiracy, or evil doings. Now he was instructed to go to the bookstore and purchase a copy of the "Little Red Book" containing the quotations of Chairman Mao Tse-tung. It was pointless to ask what purpose the purchase of this particular book would serve. It was obvious to us that the supervisor felt that the bookstore, by selling this book, was somehow implicated in the Oriental branch of the Communist conspiracy.

The agent dutifully made his way to the Drum and Spear where he learned that they had sold their last copy of the book. Rather than order a copy to be mailed to the supervisor, a cheeky solution which he admitted considering, he returned downtown, bought a copy at Brentano's, and duly

passed it on to the bureau supervisor, just as if it had come from the Drum and Spear. Thereafter, the written description of the Drum and Spear contained the note that radical literature including the "Little Red Book" of Mao Tse-tung was obtainable there.

As I worked on Racial Matters in Washington (a city whose black population comprises more than 70 percent of the total), the appalling racism of the FBI on every level became glaringly apparent to me. It seemed that every politically dissident black man was a candidate for investigation. Perhaps this racism was no worse than in other branches of government, but it was extremely discouraging to find it so firmly entrenched in an organization of supposedly educated, professional men charged with responsibility for investigating violations of the civil rights laws.

The documents stolen from the Media, Pennsylvania, office of the FBI demonstrate the endemic racism of the bureau. In one memo that J. Edgar Hoover directed to all offices of the FBI, he ordered that "all black student unions and similar organizations organized to project the demands of black students, which are not presently under investigation, are to be subjects of discreet preliminary inquiries, limited to established sources and carefully conducted to avoid criticism, to determine the size, aims, purposes, activities, leadership, key activists, and extremist interest or influence in these groups." The stated purpose for these investigations was that these groups are the "target for influence and control by violence prone Black Panther Party (BPP) and other extremists."

Only the fact that the organizations to be investigated were black could explain the horrendous abuse of logic that the bureau used to justify this invasion of campuses throughout the country. J. Edgar Hoover had publicly announced that the small and largely ineffectual Black Panther Party was the greatest single threat to the security of the country. Having itself created the threat, the bureau set out to neutralize it. Even if Hoover could have seriously documented his charges against the Panthers, which he never did, it was absurd to investigate hundreds of people whose only connection with the Black Panther Party was that the party was trying to influence them. Hoover might similarly have justified an FBI investigation of every member of a "working class" union because the Communist Party directed its propaganda and organizing effort at workers, or an investigation of every college student organization because the SDS sought to influence and control students.

Nor was this assault on the black student unions an isolated incident. I could cite many similar ones, for example the FBI's interest in the Smithsonian Institute when it opened an annex in the largely black Anacostia section of Washington, D.C. One of the annex's first events was a program for Black History Week centered on the life and contributions of Frederick Douglass. The FBI actually paid informants to attend the program and report the contents of the speeches given during it.

In the case of Stokely Carmichael the FBI was particularly determined and vicious. When he moved to Washington, D. C., in December, 1967, our squad kept him under surveillance twenty-four hours a day, following him about the city from lookouts and cars,

and on foot. The investigation became even more intense a few days after Martin Luther King was assassinated. When blacks in Washington, D. C., as well as in many other cities, outraged by the murder, rioted for a day and a half, in the Washington Field Office a fifty-man special squad was assembled to get Carmichael for inciting to riot. We were directed to gather evidence showing that Carmichael had plotted, planned, and directed the rioting, burning, and pillage that took place in Washington, D.C. Fifty agents spent their full time for over a month on this one case.

One man, who later admitted that he had "been mistaken and perhaps exaggerated a bit," claimed that Carmichael had a pistol which he fired into the air and then told the crowd to go home and get guns. A great many others stated firmly that Carmichael had urged the crowd not to dishonor Dr. King's memory by rioting and had politely asked shop owners to close their shops in his memory. Lacking any substantial evidence on which to base a charge, the bureau nevertheless submitted voluminous reports on the minute by minute activities of Carmichael that were heavily weighted to imply that he had actually incited the mobs. Had Carmichael not decided to leave this country and go to Africa, the FBI, I am confident, would eventually have found something with which to bring an indictment against him.

Quite by accident I learned that the Internal Revenue Service (IRS) was aiding in the hunt for something with which to pin a charge on so-called "Black Militants." In early 1969 I was checking the background of a former member of SNCC, a man I had been investigating for almost two years. On three occasions I tried to close the case because I could find no indication that the subject was doing anything that would warrant an FBI investigation. Each time permission was refused; his status as a former member of SNCC being sufficient justification for going on with the investigation. I learned that the IRS had requested his arrest record from the Identification Division of the FBI. When I went to the IRS I found it had secretly set up a special squad of men to investigate the tax records of a list of "known militants and activists," and that the FBI was supplying the names of the persons for the IRS to include in this list. After talking to several IRS officials I was sent to a locked sound-proofed room in the basement of the IRS headquarters in Washington where I found a file on my subject, among hundreds of others piled on a long table.

V

There are hardly any limits on the bureau's activities in compiling political information, particularly about the new left. A case in point is the Institute for Policy Studies, an organization set up by dissenting officials in Kennedy's administration to carry out independent studies in international and domestic questions. The Institute

caught my attention shortly after I began investigating the new left. Reports from FBI informants showed that many of the leaders and spokesmen of antiwar and civil rights organizations called at the Institute when they visited Washington.

I reasoned that if there were a conspiracy that linked all these groups the Institute was the logical place to look for it. I drafted a memo to that effect and requested that a case on the Institute be opened and assigned to me. My supervisor quickly agreed: he was then trying to increase the case load of the squad to justify a request for an increase in manpower.

Most of the information about the Institute's work is easily available and I was soon able to accumulate a vast dossier on it including biographical sketches of its founders, sources of its financial support, a general idea of its day to day operation, and a pile of scholarly studies published by it. After analyzing this data I concluded that the Institute was not the secret mastermind of any conspiracy to overthrow the government but simply what I described in my report as a "think-tank of the Left," where a wide variety of current and former government officials, lawyers, journalists, radicals, and others were holding seminars, doing research, writing reports, etc. I closed the investigation. To do otherwise, incidentally, would have meant a mound of paperwork that would have occupied me full time for months.

About a year later another agent newly assigned to the squad came to see me with the closed file of the Institute and asked whether I thought the case ought to be reopened. This agent, like so many others, had strong right-wing views and could not believe that the Institute was merely sponsoring seminars and doing the other work I had described. It seemed necessary to him to think that a grand new left conspiracy existed. In spite of my opposition, he had the case reopened and began a full-scale investigation of the Institute. He began monitoring the checking account of the Institute to determine where its money was going. He asked for telephone company records and compiled a list of the Institute's long distance telephone calls. He attempted to place informants in the Institute as student interns and gathered every available paper published by it. Individual investigations were then opened on the people who worked for or received money from the Institute.

When I left the bureau in April, 1970, the case on the Institute was still being investigated with gusto, and a huge collection of papers and reports on it had accumulated. So far as I have been able to determine, the FBI has found no evidence whatever of any illegal activity by the IPS, but the Institute continues to be investigated.

My experience has shown me that the FBI in its pursuit of blacks, the antiwar movement, and college activists was not an impartial, disinterested finder of fact but rather a relentless guardian of orthodoxy, a police force which sought to cause harm to movements that boldly questioned the policies of the government. It engaged in these activities not simply because of the political prejudices of the director and his staff, but, to a large extent, to justify its own existence. Each attack on any outspoken critic of American institutions was intended to show the FBI as the indispensable

protector of the public. To each slanderous name-calling or alarmist leak to the press, Hoover added a soft-spoken if tendentious appeal to Congress for more money and additional personnel. Enemies of the public were created to justify the bureau's role as defender of the "National Security" against domestic foes who sought, according to Hoover's propaganda, to subvert the country.

This is not to say that an effective federal investigative agency is not needed to deal with crimes or that the FBI itself has not done efficient and honest criminal work (although it has for years been reluctant to act vigorously against organized crime). But my years in the FBI convinced me that most of what the bureau does in matters of internal security consists of investigations and rumor mongering that are foolish, pointless, and time-wasting so far as protection of the public from violation of criminal laws is concerned; while the agency is all too effective in harassing legitimate political activity. At the same time, all of the investigations I have referred to here have resulted in adding more names and dossiers to the millions in the FBI's files. The FBI is thus creating a proliferating store of secret police files on innocent people, often based on bizarre allegations and dubious information, and sometimes on nothing at all.

What I saw and did as an agent for the FBI exposed for me the wisdom of the old question: Who will watch the watchers? I have no easy answer to it. □

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT TERRY T. O'CONNOR FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced against defendant Terry T. O'Connor on July 16, 1976. During a portion of the time pertinent to the subject matter of this action, defendant O'Connor was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C., Field Office. Defendant O'Connor moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted. In addition, one aspect of the claim against him is barred by the applicable statute of limitations.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against defendant O'Connor. No specific act or occurrence is alleged. The claims against defendant O'Connor are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and

monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant O'Connor, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, only plaintiff Waskow provided responses implicating defendant O'Connor.*/

The interrogatory to each plaintiff was the following:**/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Plaintiff Waskow, in response to this interrogatory, stated that defendant O'Connor participated in four separate activities.

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*/ Plaintiffs Sammie Abbott and Tina Hobson state in their responses that they believe they are entitled to damages from defendant O'Connor, however, neither of them describes any act in which defendant O'Connor was allegedly involved. See plaintiff Sammie Abbott's responses, served April 24, 1981, and plaintiff Tina Hobson's responses, served April 28 and July 24, 1981. Having made no claim that defendant O'Connor committed any wrongful act, they are not entitled to damages from him.

**/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

Between May, 1968, and April, 1971, defendant O'Connor allegedly committed the following acts:*/

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left.
>
> . . . .
>
> Acquiring and keeping information concerning my private and first amendment actitivities for purposes of the COINTELPRO--New Left conspiracy.

Between January 1, 1964 and July 16, 1976, defendant O'Connor allegedly committed the following act:**/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associaties, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

Between July 1, 1971, and April, 1973, defendant O'Connor allegedly committed the following act:***/

> For purposes of the COINTELPRO--New Left conspiracy, receiving and keeping photo copies of mail belonging to me or the Institute for Policy Studies known to be stolen by an informant who first was handled by MPD and later by the federal defendants.

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*/ Responses by plaintiff Waskow, No. 1.A. and No. 1.D.

**/ Responses by plaintiff Waskow, No. 1.H.

***/ Responses by plaintiff Waskow, No. 1.G.

On the basis of those "acts", plaintiff Waskow seeks substantial damages from defendant O'Connor.*/

A. Plaintiff Waskow's Responses To Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The first three so-called "acts" described by plaintiff Waskow and quoted above are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Developments, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discovery such details, so that plaintiff Waskow's failure to link defendant O'Connor with any specific instance of misconduct and to describe the consequence of such conduct to him constitutes a failure to state a claim which entitles the plaintiff to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

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*/ Responses by plaintiff Waskow, No. 4 and 5.

B. The Actions Described By Plaintiff Waskow Do Not State A Cause of Action Upon Which Relief May Be Granted

The first three actions described above do not state a cause of action against defendant O'Connor upon which relief may be granted to plaintiff Waskow.

The first claim by plaintiff Waskow is that defendant O'Connor participated in a conspiracy to deprive him of his constitutional rights. Conspiracy alone, however, does not give rise to a cause of action. To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanraehan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiff Waskow describes no such overt act; consequently, his allegation of conspiracy does not state a claim against defendant O'Connor upon which relief may be granted.*/

Secondly, plaintiff Waskow states that defendant O'Connor acquired and kept information concerning his private and first amendment activities. Plaintiff, however, describes no act and makes no allegation indicating that the method of acquisition violated any legal or constitutional right or that the information was used in any manner to cause him injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peace Parage v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

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*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

The third allegation made by plaintiff Waskow is that information concerning him was obtained by informants acting at defendant O'Connor's direction.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. . . . The use of informers and infiltrators by itself does not give rise to any claim or violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiff does not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S. 745, 749 (1971).

Plaintiff Waskow neither describes nor alleges any act by defendant O'Connor which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, nor does he describe any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9.

The plaintiff's factual statements regarding his claims against defendant O'Connor are thus insufficient to state a claim upon which relief may be granted.

C. The Claim That Defendant O'Connor Received Wrongfully Acquired Photocopies Of Plaintiff's Mail Is Barred By The Statute Of Limitations

The fourth claim quoted above, that defendant received photocopies of plaintiff Waskow's mail stolen by an informant, is not based on the record of this action. The identical allegation, however, was contained in a civil action filed in this Court in February, 1974, viz, Institute for Policy Studies, et al. v. John Mitchell, et al., Civil Action No. 74-316 (D.D.C.).*/ Defendant O'Connor was also a defendant in that action, in which it was alleged that in November, 1971, an informant under his control, one Earl Robert Merritt, stole documents, including mail intended for Arthur Waskow, from the premises of the Institute for Policy Studies.

This claim is barred by the applicable statute of limitations, the period of which is not longer than three years, 12 D.C. Code §301(8).**/ See Fitzgerald v. Seamans, 553 F.2d 220 (D.C. Cir 1977); Church of Scientology of California

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*/ The named plaintiffs, in addition to the Institute for Policy Studies, were Richard Barnet, Marcus Raskin, and Ralph Stavins, all of whom were associates of plaintiff Waskow. The action was alleged to be a class action, but certification was denied, and plaintiff Waskow was listed as a member of the alleged class. Mr. Waskow subsequently sought and was granted permission to intervene as a party plaintiff but elected not to do so. See deposition of Arthur Waskow, November 7, 1978, at 10-14. [Undersigned counsel, David H. White, was also counsel for federal defendants in Civil Action 74-316].

**/ As argued by separate motion, the federal defendants contend that all claims are barred by the statute of limitations. The argument is presented here inasmuch as the defense is uniquely available to defendant O'Connor in this instance.

v. Foley, 640 F.2d 1335 (D.C. Cir. 1981). The record of the civil action IPS v. Mitchell and the record of this action demonstrate that prior to July 16, 1973, i.e., three years prior to the commencement of the instant action, plaintiff Waskow was not only aware of the Federal Bureau of Investigation's interest in the Institute for Policy Studies*/ but also specifically aware of the charges made by and about Earl Robert Merritt.

In response to interrogatories served by the federal defendants in IPS v. Mitchell, plaintiffs in that action described the events relating to the alleged activities of Earl Robert Merritt. In addition, those plaintiffs stated that Mr. Merritt himself described this incident to their attorney, Mitchell Rogovin, on January 27, 1972, and that Mr. Merritt told Arthur Waskow, possibly in December, 1971, that he had been asked by law enforcement authorities to infiltrate the Institute for Policy Studies.**/

These facts demonstrate conclusively that many months prior to July, 1973, plaintiff Waskow, as well as his associates, was personally aware of information sufficient to form the basis for intelligent prosecution of his claims. All his claims, and particularly his claim against defendant O'Connor, are barred by the statute of limitations.

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*/ See Exhibit A, article by Robert Wall, New York Review of Books, January 27, 1972, and deposition of Arthur Waskow at 26-27, where plaintiff status that Wall talked to him at the same time the public disclosures were made. Mr. Wall, a former Special Agent of the Federal Bureau of Investigation, describes the Bureau's investigative activities directed at the Institute for Policy Studies.

**/ See Exhibit B, plaintiffs' answers to interrogatories, Institute for Policy Studies v. Mitchell, Civil Action No. 74-316, served January, 1975, at 12-15, 17-19.

CONCLUSION

For the foregoing reasons, defendant Terry T. O'Connor's motion for judgment on the pleadings should be granted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INSTITUTE FOR POLICY STUDIES, et al.,	
Plaintiffs,	
-v-	Civil Action No. 74-316
JOHN N. MITCHELL, et al.,	
Defendants.	

ANSWERS TO FIRST SET OF INTERROGATORIES BY DEFENDANTS ROBERT C. MARDIAN AND WILLIAM C. SULLIVAN, INDIVIDUALLY AND IN THEIR FORMER OFFICIAL CAPACITY; JAMES C. McGRATH, TERRY T. O'CONNOR AND WILLIAM T. TUCKER, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITY; JOHN N. MITCHELL AND JOHN D. EHRLICHMAN, IN THEIR FORMER OFFICIAL CAPACITY; AND CLYDE TOLSON, IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF THE LATE J. EDGAR HOOVER, TO PLAINTIFFS INSTITUTE FOR POLICY STUDIES, RICHARD BARNET, MARCUS RASKIN AND RALPH STAVINS

1. With respect to the allegations contained in paragraph 23 of the Complaint, please set forth in detail the information or the basis for the belief which leads plaintiffs to conclude

   a. that arrangements were made to intercept wire communications made to and from the telephone installations of

      (i) Institute for Policy Studies,

      (ii) the private residence of Richard Barnet,

      (iii) the private residence of Marcus Raskin,

      (iv) the private residence of Ralph Stavins;

Exhibit B
Civil Action
No. 76-1326

1. a. (i) - (iv)

(A) A memorandum dated August 11, 1971, from Egil Krogh and Defendant Young to Defendant Ehrlichman (Exhibit A) contains the statement that "Richard Barnet (IPS) [and] Marcus Raskin . . . have been overheard." Plaintiffs believe that this statement refers to overhearing by means of electronic surveillance.

(B) In or about the months of October and November, 1971, tests were carried out upon certain telephone lines at the premises of Plaintiff Institute for Policy Studies and also on the home telephone lines of the individual Plaintiffs. In most instances, these tests indicated that such telephone lines were subject to electronic surveillance. See Answers to Interrogatories 7 and 8, and Exhibits B, C, and D.

b. <u>that such arrangements were made by defendants Hunt, Liddy, Caulfield or Ulasewicz;</u>

b. Defendants Hunt and Liddy were employees of the Special Investigation Unit in the Executive Office of the President which was supervised by Defendant Young and Egil Krogh. The Unit received reports based upon electronic surveillance of numerous persons. In 1971 Defendant Liddy was authorized by Defendant Ehrlichman to conduct a number of wiretaps. Defendant Caulfield was an employee of the Executive Office of the President, and, on the instructions of Defendant Ehrlichman, arranged for the installation of electronic surveillance

devices on several occasions. Defendant Ulasewicz was hired by Defendant Ehrlichman and worked under the direction of Defendant Caulfield on a number of surveillance activities.

c. that such arrangements were made by certain unknown employees of the Federal Bureau of Investigation or other agencies of the Federal Government;

c. The Federal Bureau of Investigation has installed or made arrangements for the installation of numerous electronic surveillance devices.

d. that such arrangements were made prior to August 11, 1971.

d. See answer 1.a.(A) above.

2. With respect to the allegations contained in paragraph 23 of the Complaint, please state what is meant by the phrase, "made arrangements."

2. The phrase "made arrangements" means that the persons named either gave orders to or made requests of other persons or took direct actions, such as the installation of devices, as a result of which wire communications were intercepted.

3. With respect to the allegations contained in paragraph 23 of the Complaint, please state

a. the telephone numbers and addresses, at the time of the alleged interceptions, of

(i) Institute for Policy Studies,

(ii) the private residence of Richard Barnet,

(iii) the private residence of Marcus Raskin,

(iv) the private residence of Ralph Stavins;

3. a. (i) 234-9382/90; 234-5595

(ii) 726-4739 (home); 234-0183 (office private line)

(iii) 483-1777 (home 1969-70); 232-6955 (home prior to 1969 and 1970 to date); 332-5993 (office private line)

(iv) (703) 536-5682 (home 1970-71); 362-2480 (home 1971 to date); 462-8123 (office private line)

b. the name(s) of the person(s) who contracted the service for each telephone;

b. (i) Institute for Policy Studies,

(ii) Richard Barnet,

(iii) Marcus or Barbara Raskin,

(iv) Ralph Stavins.

c. the person(s) who pay(s) the bills for such telephone service.

c. (i) Institute for Policy Studies,

(ii) Richard Barnet,

(iii) Marcus Raskin,

(iv) Ralph Stavins.

4. With respect to the allegations contained in paragrapn 24 of the Complaint, please set forth in detail the information or the basis for the belief which leads plaintiffs to conclude

a. that the wire communications of each plaintiff were

(i) intercepted, including

(A) the specific facts which reasonably lead plaintiffs to believe that each of them has been subjected to electronic surveillance,

4. a. (i) (A) See Answer 1.a. above.

(B) the dates of such suspected surveillance,

(C) the identity of the person(s), by name and description together with their respective telephone numbers, with whom plaintiffs were communicating at the time each claimed surveillance took place;

(B) and (C) Since Plaintiffs were not informed at the time that their wire communications were subject to electronic surveillance, they are not aware of the exact date on which such surveillance began, the specific dates on which they were overheard, or the identity of the persons to whom they were communicating when they were overheard. However, according to a memorandum dated April 17, 1974, from the Director of the Federal Bureau of Investigation to the Assistant Attorney General (Criminal Division) Peterson, filed of record in this action by the Federal Defendants on July 17, 1974, conversations of Plaintiff Barnet were overheard through electronic surveillance conducted by the Federal Bureau of Investigation on October 14, 1971, December 16, 1971, February 16, 1972, July 14, 1972, November 22, 1972, November 27, 1972 and January 3, 1974. A conversation of Plaintiff Ralph Stavins was overheard by electronic surveillance conducted by the Federal Bureau of Investigation on February 3, 1973. According to an affidavit of William B. Saxbe, Attorney-General of the United States, filed of record in this action by the Federal Defendants on December 20, 1974, plaintiffs were also overheard on, inter alia, February 24, 1969, April 29, 1970, April 19, 1974, and June 20, 1974.

(ii) disclosed;

(ii) See Answer 1.a. above.

b. that defendants Hunt, Liddy, Caulfield or Ulasewicz intercepted and disclosed the wire communications of each plaintiff;

b. See Answer 1.b. above.

c. that certain unknown employees of the Federal Bureau of Investigation or other agencies of the Federal Government intercepted and disclosed the wire communications of each plaintiff;

c. See Answer 1.c. above.

d. that intercepted communications of each plaintiff were disclosed to

(i) J. Edgar Hoover,

(i) The late J. Edgar Hoover, former Director of the Federal Bureau of Investigation, approved requests for electronic surveillance conducted by the Federal Bureau of Investigation that had not been approved by court order in accordance with the provisions of 18 U.S.C. § 2518, and received the results of such surveillance.

(ii) William C. Sullivan,

(ii) Certain electronic surveillance that had not been approved by court order in accordance with the provisions of 18 U.S.C. § 2518, was initiated upon the order of Defendant Sullivan, who at the material time was Assistant Director of the Federal Bureau of Investigation. The logs and records of such wire tapping were maintained in Defendant Sullivan's office, upon the instructions of the late J. Edgar Hoover.

(iii) James C. McGrath,

(iii) Defendant McGrath was a member of a body known as the Interagency Domestic Intelligence Unit, which received reports based on electronic surveillance.

(iv) John N. Mitchell,

(iv) Defendant Mitchell, former Attorney General of the United States, authorized certain electronic surveillance by the Federal Bureau of Investigation that had not been approved by court order in accordance with the provisions of 18 U.S.C. § 2518. Reports on the results of such electronic surveillance were sent to Defendant Mitchell.

(v) John D. Ehrlichman,

(v) Defendant Ehrlichman, former counsel to the President of the United States and subsequently Assistant to the President for Domestic Affairs, ordered electronic surveillance to be carried out that had not been authorized by court order in accordance with the provisions of 18 U.S.C. § 2518, and received reports on the results of electronic surveillance. In 1971 Defendant Ehrlichman authorized Defendant Liddy, an employee of the Special Investigations Unit in the Executive Office of the President, to conduct a number of wiretaps.

(vi) Robert C. Mardian,

(vi) Between November 1971, and May 1972, Defendant Mardian was Assistant Attorney General in charge of the Internal Security Division of the Department of Justice. Material relating to certain electronic surveillance that

had not been approved by court order in accordance with the provisions of 18 U.S.C. § 2518 was delivered to Defendant Mardian by Defendant Sullivan.

(vii) David Young.

(vii) Defendant Young was co-chairman of the Special Investigations Unit in the Executive Office of the President. The Unit received reports based upon electronic surveillance.

5. With respect to the allegations contained in paragraph 25 of the Complaint, please set forth in detail the specific facts which lead plaintiffs to conclude that the interceptions were "procured" by J. Edgar Hoover and defendants Sullivan, McGrath, Mitchell, Ehrlichman, Mardian and Young, including

   a. the specific acts of each defendant which constitute procurement;

   b. the relationship between procurement and each defendant's official duties;

   c. the manner and nature of the communications between each defendant and Hunt, Liddy, Caulfield, Ulasewicz and/or unknown employees of the Federal Bureau of Investigation or other agencies of the Federal Government;

   d. whether the interceptions allegedly procured and used by J. Edgar Hoover and defendants, Sullivan, McGrath, Mitchell, Ehrlichman, Mardian and Young are the same interceptions for which arrangements were allegedly made by defendants Hunt, Liddy, Caulfield, Ulasewicz and/or certain unknown employees of the Federal Bureau of Investigation or other agencies of the Federal Government.

5. See Answer 4.d. above. Plaintiffs are unable to respond further to this Interrogatory until they have completed discovery herein.

6. With respect to the allegations contained in paragraph 25 of the Complaint, please set forth in detail the specific facts which lead plaintiffs to conclude that the interceptions were "used" by

J. Edgar Hoover and defendants Sullivan, McGrath, Mitchell, Ehrlichman, Mardian and Young, including

a. the manner and format in which each defendant received the contents of each interception;

b. the knowledge that each defendant had that electronic surveillance was the source of the contents of each interception disclosed to him;

c. the type and nature of each use;

d. the purpose of each use;

e. the relationship of each use to the official duties of each defendant;

f. each use which was other than in the normal course of each defendant's official duties;

g. the persons, if any, immediately involved with defendants in each use;

h. the communications, if any, of each defendant involved in each use;

i. the disposition of each use by each defendant.

6. See Answer 4.d. above. Plaintiffs are unable to respond further to this Interrogatory until they have completed discovery herein.

7. Please state whether plaintiffs or their agents conducted, or caused to be conducted, any tests to determine whether interception devices had been placed on the telephone installations of

a. Institute for Policy Studies,

a. Yes.

b. the private residence of Richard Barnet,

b. Yes.

c. the private residence of Marcus Raskin,

c. Yes.

d. the private residence of Ralph Stavins.

d. Yes.

8. If the answer to Interrogatory 7 is in the affirmative, with respect to each test referred to in the answer to the previous interrogatory, please state

a. the date, time and location of each test;

a. Institute for Policy Studies -- on October 27 and 28, 1971. Other Plaintiffs -- in or around October or November 1971.

b. the telephone number for each instrument and line tested;

b. 234-9382 and extensions 30 and 60 on that line. (703) 536-5682; 726-4739; 232-6955.

c. the name(s) and address(es) of the person(s) who conducted each test;

c. Ralph Stavins, 5516 [illegible] Place, N. W., Washington D. C.; C. R. Wallace, 1402 New York Avenue, N. W., Washington, D. C.; Leonard S. Rodberg, 6612 2nd Street, N. W., Washington, D. C.

d. the type of equipment used for each test, including its manufacturer, model and serial number, and whether each or any piece of equipment was modified in any way prior to the test;

d. See Exhibits B, C, and D.

e. the specific results, in detail, of each test and measurement;

e. See Exhibits B, C, and D. The tests on the home telephone of Richard Barnet were inconclusive. The tests on the home telephone of Marcus Raskin indicated that the telephone was subject to electronic surveillance.

f. whether any notes, records or reports were made of each test.

f. With the exception of Exhibits B and C, any notes, records or reports that may have been made as to such tests by Ralph Stavins and Leonard S. Rodberg no longer exist. Plaintiffs are unable to answer this Interrogatory with respect to C. R. Wallace.

9. With respect to the allegations contained in paragraph 26 of the Complaint, please set forth in detail the information or the basis for the belief which leads plaintiffs to conclude that "Defendant Chesapeake & Potomac Telephone Company assisted in the arrangements made for such interceptions and participated in the interceptions of the wire communications of Plaintiffs and others similarly situated." Please include in your answer whether it is plaintiffs' contention, and if so state the basis for such contention, that the defendant telephone company's alleged assistance and participation was "procured by" or otherwise encouraged by J. Edgar Hoover or by defendant Sullivan, McGrath, Mitchell, Ehrlichman, Mardian or Young.

9. Defendant Chesapeake and Potomac Telephone Company has admitted that it made arrangements for the overhearing of telephone conversations by the Federal Bureau of Investigation. It is Plaintiffs' contention that the Defendant telephone company's assistance and participation was "procured by" or otherwise encouraged by the late J. Edgar Hoover or by Defendant Sullivan, McGrath, Mitchell, Ehrlichman, Mardian or Young. See Answer 4.d. above.

10. With respect to the allegations contained in paragraphs 27 and 32 of the Complaint, please state whether plaintiff Barnet, Raskin or Stavins or any other employee of plaintiff Institute for Policy Studies

    a. failed to speak freely on any occasion in a telephone conversation for fear that such conversation was being intercepted; if so, please state the circumstances;

    b. was deterred from associating or communicating with any person or organization because of the fear of interception, disclosure and use of wire communications; if so, please state the circumstances;

    c. undertook any measures to avoid, thwart, overcome or neutralize the interception

of his/her communication; if so, please describe the measure taken as well as the date and location.

10. Since the time that Plaintiffs had cause to believe that their telephone conversations were subject to interception, they have attempted to avoid discussing in telephone conversations matters which they regarded as confidential. Instead, they arranged where possible for personal meetings with the persons with whom they wished to speak. For example, Plaintiffs on numerous occasions arranged to meet personally with their counsel rather than discuss matters on the telephone.

Plaintiffs are unaware of any measures that may be taken to avoid, thwart, overcome or neutralize electronic surveillance of telephone communications.

11. With respect to the allegations contained in paragraph 33 of the Complaint, please set forth

a. the physical description and other identifying characteristics of Jane Doe and her name and address if now known;

11. a. Plaintiffs have been informed that the name of "Jane Doe" is Ann Kolego. Plaintiffs are not aware of Ann Kolego's physical description or her address, but they believe that she is still employed by the Metropolitan Police Department of the District of Columbia.

b. the nature of the pretense which allowed her to gain entry to the premises of plaintiff Institute for Policy Studies;

b. Plaintiffs have been informed that Jane Doe pretended to be attending a meeting at the premises of Plaintiff Institute for Policy Studies.

c. the manner in which she acquired the documents allegedly removed from the premises of plaintiff Institute for Policy Studies;

c. Jane Doe was observed taking documents from the mailboxes in the receptionist's office adjoining the lobby in the premises of the Institute for Policy Studies.

d. the name of each person known to have delivered documents to Jane Doe while she was on the premises of plaintiff Institute for Policy Studies;

d. None.

e. a description of the documents allegedly removed;

e. The documents taken included a letter from Mrs. Carol D. Swan, Colgate University, Hamilton, New York, dated November 17, 1971, to Arthur Waskow, and an enclosed airline ticket (see attachments to Affidavit of Earl Robert Merritt, dated July 26, 1974, and filed of record in this action by Plaintiffs on July 30, 1974).

f. the name and address of each person known to have spoken with, seen or encountered Jane Doe while she was on the premises of plaintiff Institute for Policy Studies;

f. Earl Robert Merritt (present address unknown).

g. the date(s) and time(s) on which Jane Doe entered the Institute for Policy Studies and removed documents;

g. The early evening of a day in November 1971, probably November 23.

h. when and under what circumstances plaintiffs discovered or were informed that Jane Doe had entered the Institute for Policy Studies and removed documents;

h. On or about January 27, 1972, Earl Robert Merritt informed Mitchell Rogovin, counsel for Plaintiffs, that he had witnessed Jane Doe remove documents from the premises of Plaintiff Institute for Policy Studies.

i. the information or the basis for the belief that she was an employee of the Metropolitan Police Department.

i. An article published in "The Daily Rag," issue of September 28 - October 5, 1973 (attached to Affidavit of Earl Robert Merritt, dated July 26, 1974, and filed of record in this action on July 30, 1974).

12. With respect to the allegations contained in paragraph 33 of the Complaint, please set forth

a. what is meant by the verb "procured";

b. the information or basis for the belief which leads plaintiff to conclude that defendants Terry T. O'Connor and William T. Tucker procured Jane Doe to enter and remove documents from the premises of plaintiff Institute for Policy Studies.

12. a. and b. Since filing their Complaint herein, Plaintiffs have received further information concerning the incident described in Paragraph 33 of the Complaint. On the basis of such further information which is set forth in the Affidavit of Earl Robert Merritt dated July 26, 1974, and filed of record in this action on July 30, 1974, Plaintiffs now aver that such incident took place in November, 1971 (and not January, 1971, as alleged in the Complaint), that documents were removed from the premises of Plaintiff Institute for Policy Studies by both Jane Doe and Earl Robert Merritt, that

Earl Robert Merritt was acting with the approval of and under the instruction of Defendants Tucker and O'Connor, and that Earl Robert Merritt delivered such documents to Defendant Tucker at the request of the latter.

At the appropriate time Plaintiffs will move the Court for leave to amend the Complaint to conform with the evidence.

13. With respect to the allegations in paragraph 34 of the Complaint that the premises of plaintiff Institute for Policy Studies were broken into and entered on several occasions, please set forth with respect to each alleged breaking and entering

a. the date, time and manner in which the breaking and entering was accomplished;

13. a. As to the incident on May 24, 1973, see Answer 13.d. below. As to the incident on August 2, 1973, an unmarked automobile was seen in the alley separating the Institute for Policy Studies from the DuPont Plaza Hotel at approximately 3:15 a.m. At the same time a first floor window of the Institute was open and a light on inside. The car was seen to drive off. Another car was seen parked on the other side of the street, and in it was a man wearing a policeman's shirt. When observed, the car drove off at high speed.

b. a description of each object, article, effect or document removed, damaged, tampered with or handled by the perpetrators of the breaking and entering;

b. Plaintiffs are not aware of what objects, articles, cles, effects or documents were removed, damaged, tampered

with or handled by the perpetrators of the breaking and entering.

c. the name and address of each known witness to the breaking and entering;

c. Earl Robert Merritt (present address unknown).

d. whether the breaking and entering was reported to law enforcement authorities, and if so

d. Yes.

(i) by whom, when, where and to whom such report was made;

(i) A report was made to the Metropolitan Police Department by Mrs. Marcus Raskin at approximately 1:40 a.m. on the evening of May 24, 1973. Letters describing the incident were sent on May 25, 1973, to Jerry D. Wilson, Chief of Police, Washington, D. C., and William D. Ruckelshaus, Acting Director, Federal Bureau of Investigation (copies of such letters are attached).

(ii) the substance of such report;

(ii) That Mrs. Raskin had received an anonymous telephone call at 1:35 a.m. indicating that two police officers in plain clothes had entered the Institute for Policy Studies shortly before the call. Shortly afterwards Mrs. Raskin received a further call indicating that the two police officers had left the scene in an automobile with D. C. License No. 774-443.

(iii) the action taken by the law enforcement authority as a result of such report, including the final disposition or conclusion;

and if not, the reason that no report or complaint was made;

(iii) A Metropolitan Police Officer, accompanied by Plaintiff Raskin, searched the premises beginning at approximately 2:05 a.m. Plaintiffs were not informed of the final disposition of the matter, but documents recently disclosed to Plaintiffs pursuant to a subpoena duces tecum directed to Acting Chief of Police John D. Hughes indicate that the license number in question had been issued to two vehicles including a detective cruiser operated by the Metropolitan Police Department. The plain clothes police officers operating the cruiser admitted being in the vicinity of the Institute for Policy Studies at the time in question, but denied that they were engaged in surveillance activities directed at the Institute for Policy Studies.

e. the information or basis for the belief which leads plaintiffs to conclude that the breaking and entering was committed by unknown employees of the Federal Bureau of Investigation and/or the Metropolitan Police Department.

e. See Answer 12.d. above.

14. With respect to the affidavit of Earl Robert Merritt dated July 26, 1974, and filed of record in this action by plaintiffs on July 30, 1974, please state

a. whether plaintiffs contend that the incident described by Merritt in which a young woman removed documents from the premises of the Institute for Policy Studies in November, 1971, is the same as, is related to, or is unrelated to the allegations in paragraph 33 of the Complaint; and if they are related, please state

(i) the facts and circumstances relating the two incidents;

(ii) whether the young woman described in the affidavit is defendant Jane Doe;

(iii) whether plaintiffs contend that the young woman described in the affidavit was acting pursuant to the suggestion, direction or instruction of any of the Federal defendants or of any employee of the Federal Bureau of Investigation or other agency of the Federal Government;

14. a. The incident described in the affidavit of Earl Robert Merritt, is the same incident as that described in paragraph 33 of the Complaint.

b. when, by whom and under what circumstances plaintiffs were first informed of the events described in the affidavit.

b. Plaintiffs were first informed of the events described in the affidavit on January 27, 1972, when Earl Robert Merritt described the incident to Mitchell Rogovin, counsel for Plaintiffs, and Plaintiff Barnet.

15. Please state whether Earl Robert Merritt told Robert E. Herzstein, in or before September, 1971, and/or Arthur Waskow, in or about December, 1971, that he was gathering intelligence concerning the Institute for Policy Studies for law enforcement authorities. If so, please state what measures plaintiffs took to bar Merritt's access to the premises of the Institute for Policy Studies or otherwise to prevent his information gathering activities.

15. In or about September 1971, Earl Robert Merritt informed Robert E. Herzstein that he had been asked to infiltrate the Institute for Policy Studies by law enforcement authorities. Several months later, possibly in December 1971, Merritt imparted similar information to Arthur Waskow. Plaintiffs took no measures to bar Merritt's

access to the premises of the Institute for Policy Studies.

16. If the answer to the first part of the preceding interrogatory is no, please state when, to whom, and under what circumstances Merritt first revealed that he had been employed by agents of the Federal Bureau of Investigation to gather information concerning the Institute for Policy Studies. Please state what measures plaintiffs then took to bar Merritt's access to the premises of the Institute for Policy Studies or otherwise to prevent his information gathering activities.

16. Not applicable.

17. Please state the name and address of each person having knowledge of the facts and circumstances relating to the allegations contained in paragraph 23 of the Complaint and/or to the answers to Interrogatory 1.

17. a. Public Information. See, e.g., Statement of Information, Hearings before the Committee on the Judiciary, House of Representatives, 93rd Cong., 2d Sess., pursuant to H. Res. 803, Book VII ("Statement of Information").

b. As to Answer 1.a.(b); Ralph Stavins, 5516 Carolina Place, N.W., Washington, D. C. 20016.

18. Please state the name and address of each person having knowledge of the facts and circumstances relating to the allegations contained in paragraph 24 of the Complaint and/or to the answers to Interrogatory 4.

18. a. Public Information, see, e.g., Statement of Information.

b. As to the memorandum dated April 17, 1974, from the Director of the Federal Bureau of Investigation to Assistant Attorney General Peterson, this information is presumably known to the Federal Defendants and/or their counsel.

19. Please state the name and address of each person having knowledge of the facts and circumstances relating to the allegations contained in paragraph 25 of the Complaint and/or to the answers to Interrogatories 5 and 6.

19. Public Information, see, e.g., Statement of Information.

20. Please state the name and address of each person having knowledge of the facts and circumstances relating to the allegations contained in paragraph 26 of the Complaint and/or to the answers to Interrogatory 9.

20. Answer of Defendant Chesapeake and Potomac Telephone Company in Halperin v. Kissinger (D.D.C. Civ. No. 1187-73), filed on July 18, 1973.

21. Please state the name and address of each person having knowledge of the facts and circumstances relating to the allegations contained in paragraph 33 of the Complaint and/or to the answers to Interrogatories 11 and 12.

21. Earl Robert Merritt, present address unknown.

22. Please state the name and address of each person having knowledge of the facts and circumstances relating to the allegations contained in paragraph 34 of the Complaint and/or to the answers to Interrogatory 13.

22. Earl Robert Merritt, present address unknown;

Marcus Raskin, 1820 Wyoming Ave., N.W., Washington, D. C. 20009;

Barbara Raskin, 1820 Wyoming Ave., N.W., Washington, D. C. 20009.

23. Please state the name and address of any other person not identified in your answers to the foregoing interrogatories having knowledge of the facts and circumstances relating to the allegations contained in the Complaint.

23. Not applicable.

Richard Barnet

Marcus Raskin

Ralph Stavins

Sworn to before me, a Notary Public, this 13th day of January, 1975.

Susan E. Horton
Notary Public, D.C.

My Commission Expires November 30, 1975

61.5 EGIL KROGH AND DAVID YOUNG MEMORANDUM, AUGUST 11, 1971, SSC EXHIBIT NO. 90, 6 SSC 2644-45

FILED
JAN 15 1975
JAMES E. DAVEY, Clerk

THE WHITE HOUSE
WASHINGTON
August 11, 1971

MEMORANDUM FOR: JOHN D. EHRLICHMAN

FROM: BUD KROGH AND DAVID YOUNG

SUBJECT: PENTAGON PAPERS PROJECT - STATUS REPORT AS OF AUGUST 11, 1971

(1) Where things stand in the Grand Jury investigations.

The Los Angeles Grand Jury last week subpoenaed six people. Messrs. Burt Wallrich, Arne Guilfoile, Spencer Marx and Jackie Barnet all appeared and took the Fifth Amendment. Albert Appleby and Jane Youman are presently outside of California on vacation and will be subpoenaed when they can be served. Ellsberg's old telephone records were also subpoenaed but were not available since the records were not kept back that far. His Bankamericard records have also been subpoenaed but have not yet been received.

The Boston Grand Jury will meet next week. Justice has not made a final decision but is considering subpoenaing the following individuals:

Mrs. Louis Marx (mother of Mrs. Ellsberg)
Samuel Popkin (Harvard)
Richard Falk (Princeton)
Ralph Stavins (IPS)
Richard Barnet (IPS)
Marcus Raskin
K. Dunn Gifford (A friend of Sheehan and Ellsberg who stayed at Treadway Motor House March 20th, when Sheehan was there.)
Richard Steadman

It seems unlikely that Barnet, Raskin and Gifford will be called because they have been overheard.

(2) We have received the CIA preliminary psychological study (copy attached at Tab A) which I must say I am disappointed in and consider very superficial. We will meet tomorrow with the head psychiatrist, Mr. Bernard Malloy, to impress upon him the detail and depth that we expect. We will also make available to him here some of the other information

we have received from the FBI on Ellsberg. In this connection we would recommend that a covert operation be undertaken to examine all the medical files still held by Ellsberg's psychoanalyst covering the two-year period in which he was undergoing analysis.

Approve E Disapprove
if done under your assurance that it is not traceable.

(3) We have received a letter from Director Hoover confirming that the Ellsberg case and related matters will be handled on a "Bureau Special" basis.

(4) We have tasked CIA with doing a leak assessment on all leaks since January, 1969, along the lines of the attached memorandum at Tab B.

(6) We are continuing to press the FBI to determine whether the report of a foot locker containing film magazines stored for Ellsberg with Bekins Van and Storage Company in California is indeed accurate, and what the content of the films is. The foot locker was apparently picked up by a friend of Ellsberg, a reporter for Dispatch News Service, David Obst, who indicated that the contents of the foot locker were needed for a book to be published in New York.

(7) Attached at Tab C is a memorandum from Richard Smyser on impact of (a) Ellsberg case, (b) an expose of the 1963 coup, and (c) the drug situation in South Vietnam, on (a) South Vietnamese election, (b) the U. S. election, and (c) on peace negotiations.

BOSTON, MASSACHUSETTS)
) ss.
)

AFFIDAVIT OF RALPH STAVINS

I, Ralph Stavins, being duly sworn, depose and say, on the basis of my own personal knowledge:

1. I am a Resident Fellow of the Institute for Policy Studies, 1520 New Hampshire Avenue, N.W., Washington, D.C.

2. On October 27, 1971, Leonard S. Rodberg and I tested telephone lines at the above institute. The numbers we tested were: 234-9382 and also 234-9382 extention 60, which is the telephone in my private office.

3. C.F. Wallace (hereinafter referred to as "Mr. Wallace") is the proprietor of the Spy Shop, 1702 New York Avenue, N.W., Washington, D.C. He is the manufacturer and supplier of electronic surveillance and detection equipment which he has advised me he supplies to and which is used by government agencies including police departments. He has had over twenty years of experience with electronic surveillance and detection equipment.

4. I was advised by telephone today by Leonard S. Rodberg and by Mr. Wallace that on October 27 and October 28 they tested the above-designated telephone - 234-9382 - at the Institute and also extension 30 on that same telephone, which is a downstairs extension at the Institute. All of the telephone numbers and extensions referred to in this affidavit have been used by me and by Leonard S. Rodberg. I have talked on my office telephone number and on the main institute telephone number to my attorneys, including John Paul Sullivan, Doris Peterson and James Reif.

EXHIBIT B ✓

5. I was informed by Mr. Rodberg and Mr. Wallace that using a relative field strength meter a signal was detected by them, and I was also advised by Mr. Rodberg and Mr. Wallace on the telephone lines which they tested. The output from detector diodes designed to detect radio frequency signals was demodulated and amplified. With this device they detected both sides of the communication on a telephone line at extension 30. They advised me that they got the same results when they tested the main Institute night line.

6. They advised me that they heard a portion of a weather report when they dialed in on the line and then it sloped off and disappeared. Mr. Wallace said that this is definitely not a normal condition on a telephone line and that he has never heard such a condition in his twenty years of experience with electronic surveillance equipment, and he believes that it is the result of a new type of electronic surveillance equipment being used. Mr. Wallace further advised me that the test was made on a line which went directly to the central telephone office and the radio frequency is a line type carrier.

7. I used the same detection devices employed by Mr. Wallace and Mr. Rodberg when testing my office extension and the main Institute telephone line and my home telephone line - Area Code 703 - 536-5602 -- and heard the radio frequency described by them. In addition, using the meter, it registered a score of 60, which conclusively proves that a transmitter was somewhere on or near the premises of my home. I have talked to my attorneys, John

Paul Sullivan and Doris Peterson from my home telephone on several occasions.

8. I have concluded that the phones at the Institute and my home are tapped.

Ralph Stavins

Then personally appeared before me the above-named Ralph Stavins and made oath that the foregoing statements subscribed to him are true.

October 29, 1971

Notary Public

My commission expires: 11/19/77

BOSTON, MASSACHUSETTS)
) SS.

I, Leonard S. Rodberg, being duly sworn, depose and say:

1. I am a Fellow of the Institute for Policy Studies, 1520 New Hampshire Avenue, N.W., Washington, D.C., and have been employed in this capacity since July, 1970.

2. I have a Ph.D. degree in physics from Massachusetts Institute of Technology and have had much experience over the last fifteen years in using equipment in laboratory situations. I am an instrument rated pilot.

3. C.R. Wallace, an expert in electronic gear, is the proprietor of the Spy Shop, 1402 New York Avenue, N.W., Washington, D.C. He manufactures and sells electronic surveillance and detection equipment. He has advised me that his services are used by government agencies including police departments and that he manufactures equipment for and supplies it to said agencies.

4. On October 27th and 28th, 1971, Mr. Wallace and I tested the night telephone line at the Institute for Policy Studies and downstairs extension on the Institute phone. The telephone numbers we tested were (202) 234-9382 and extension 30 on that line.

5. Using a relative [illegible] signal was detected on the telephone [illegible]. The output from the detector diodes designed to detect radio frequency signals, was demodulated and amplified. With this device we detected both sides of the communication on the telephone line. This is not a normal condition but indicates a radio frequency type monitoring system has been applied to the telephone system.

6. Together with Mr. Wallace, I heard for a brief period two sides of a telephone conversation which then diminished rapidly in strength. This was repeated several times during the evening when we were testing. I was advised by Mr. Wallace that this indicates that the phone was being monitored. Mr. Wallace developed the device described earlier.

7. We got the same results from the Institute night line and from the extension phone which was tested.

8. I was advised by Mr. Wallace that he believes that a new type of electronic detection equipment may be being used on the Institute telephones.

EXHIBIT C

9. I have used the telephone numbers which we tested to talk to my attorneys including numerous calls made by me to and received by me from Doris Peterson and some from James Relf concerning matters now pending before this Court.

10. On the basis of the tests made by Mr. Wallace and myself I believe that some kind of electronic surveillance equipment is being used on the Institute telephones which we tested.

Leonard S. Rodberg

Subscribed and sworn to before me

this 29th day of October 1971.

NOTARY PUBLIC

Mtd Ryan

[illegible] D.C.)
[illegible]

[illegible]

C.R. Wallace, being duly sworn, deposes and says:

1. For about three years I have been the owner and manager of The Spy Shop, 1506 New York Avenue, N.W., Washington, D.C., which specializes in the manufacture and sale of electronic surveillance and detection equipment.

2. I have been involved in the field of electronics for at least thirty-five years (initially as a hobbyist). I have used electronic surveillance equipment for at least twenty years.

3. For more than four years I have provided on an extensive basis detection and debugging services.

4. On October 26, 1971, I sold to Dr. Leonard Rodberg an RF (radio frequency) detection device which is capable of detecting RF carriers by actual proximity to the carrier over a frequency spectrum ranging from below 100 kh (kiloherts) to 1.2 gh (gigaherts). In addition, we sold Dr. Rodberg a device which when coupled to the detector, would enable him to demodulate the carriers detected by the first device, thereby enabling him to hear the audio signals actually modulating the detected carriers.

5. On the nights of October 27 and 28, 1971, I and my crew conducted an electronic survey of the premises located at 1520 New Hampshire Avenue, N.W., Washington, D.C., and further identified as the [illegible]. We employed not only the device purchased by Dr. Rodberg, but [illegible] equipment.

6. During the course of the survey I was able to detect a number of radio frequency carriers on a telephone identified as (202) 234-9382 and an extension called #20 in the same building. At least one of the radio frequency carriers was detected as being modulated by a two-way telephone conversation on that same line and over the same [illegible]. Also detected was another carrier which we could not voice modulate but could tone modulate, utilizing a sweep tone audio frequency gene-

EXHIBIT D

meter, sweeping from 350 Kc down through 200 K

I advised Dr. Hickey that these services could be monitored from any remote area where access to "ready access terminal points" could be had. In my experience all carriers modulated by a telephone in the area are the result of a directly or indirectly applied RF radiating source or device. A normally functioning telephone line does not carry an RF carrier which can be modulated by the telephone instrument itself.

C.R. Wallace

Sworn and subscribed to before me this _____ day of November, 1971.

Notary Public

ARNOLD & PORTER

May 15, 1973

Chief Jerry Wilson
Chief of Police
Washington, D. C.

Re: The Institute for Policy Studies
1520 New Hampshire Avenue, N. W.

Dear Chief Wilson:

As counsel for the Institute for Policy Studies, we wish to disclose the following information. On the evening of May 24th, the wife of the Co-Director of the Institute for Policy Studies, Mrs. Marcus Raskin, received an anonymous telephone call at their home at 1:35 a.m. indicating that two plainclothesman had entered the Institute for Policy Studies at the above-captioned address shortly before the call. Mrs. Raskin called the police, while Mr. Raskin left his home for the Institute. Within thirty minutes from the call, Mr. Raskin appeared at the Institute where he was subsequently met by a Metropolitan Police Officer at approximately 2:05 a.m. A search of the premises by Mr. Raskin and the police officer did not reveal any individuals within.

While Mr. Raskin was at the Institute, Mrs. Raskin received another phone call from the same party who, once again, did not identify himself. At that time, he indicated [illegible] individuals,

who he referred to as detectives, had left the Institute before either Mr. Raskin or the police arrived and departed in a bronze-colored car with a District of Columbia license No. 774-443.

The automobile appears to be registered in the name of Edward Moore Cannady of 3213 Rhode Island Avenue, N. E., Apartment No. 3. The reference in the above paragraph to "plainclothesmen" and "detectives" is the language of the anonymous caller. Our client has no information other than that which is set forth above.

Over the past four years, the Institute has been advised on a number of occasions that it has been surveilled by federal and local law enforcement agencies including, but not limited to, electronic surveillance and breaking and entering. Up until recent months, we have declined to press the issue of violations of the civil rights of this organization and its members. Recent developments tend to indicate that refraining from bringing such indignities to the attention of the authorities is not consistent with Constitutional safeguards and is indeed harmful to law enforcement.

We would appreciate it, therefore, if you cause an investigation to be conducted -- not simply into an alleged burglary -- but rather into what appears to be a pattern of illegal surveillance including illegal entry by law enforcement agencies. We would also appreciate information regarding any electronic surveillance. Such an investigation should also include any evidence of electronic surveillance of the Institute, its officers, or employees or those associated with the organization.

ARNOLD & PORTER

Because this matter may well transcend jurisdictional lines, a similar letter is being sent to the Acting Director of the Federal Bureau of Investigation.

Sincerely,

Mitchell Rogovin

cc: Hon. Robert Kastenmeier

ARNOLD & PORTER

1229 NINETEENTH STREET, N.W.

WASHINGTON, D. C. 20036

TELEPHONE (202) 872-4700
CABLE ADDRESS
TELEX 89-2733

May 25, 1973

Hon. William D. Ruckelshaus
Acting Director
Federal Bureau of Investigation
Justice Department
Washington, D. C. 20535

Re: The Institute for Policy Studies
1520 New Hampshire Avenue, N. W.

Dear Mr. Ruckelshaus:

As counsel for the Institute for Policy Studies, we wish to disclose the following information. On the evening of May 24th, the wife of the Co-Director of the Institute for Policy Studies, Mrs. Marcus Raskin, received an anonymous telephone call at their home at 1:35 a.m. indicating that two plainclothesmen had entered the Institute for Policy Studies at the above-captioned address shortly before the call. Mrs. Raskin called the police, while Mr. Raskin left his home for the Institute. Within thirty minutes from the call, Mr. Raskin appeared at the Institute where he was subsequently met by a Metropolitan Police Officer at approximately 2:05 a.m. A search of the premises by Mr. Raskin and the police officer did not reveal any individuals within.

While Mr. Raskin was at the Institute, Mrs. Raskin received another phone call from the same party who, once again, did not identify himself. At that time, he indicated that the two individuals,

who he referred to as detectives from the Institute before either Mr. Raskin or [illegible] departed in a bronze-colored [illegible] District of Columbia license No. 774-443.

The automobile appears to be registered in the name of Edward Moore Cannady of 2213 Rhode Island Avenue, N. E., Apartment No. 3. The reference in the above paragraph to "plainclothesmen" and "detectives" is the language of the anonymous caller. Our client, has no information other than that which is set forth above.

Over the past four years, the Institute has been advised on a number of occasions that it has been surveilled by federal and local law enforcement agencies including, but not limited to, electronic surveillance and breaking and entering. Up until recent months, we have declined to press the issue of violations of the civil rights of this organization and its members. Recent developments tend to indicate that refraining from bringing such indignities to the attention of the authorities is not consistent with Constitutional safeguards and is indeed harmful to law enforcement.

We would appreciate it, therefore, if you cause an investigation to be conducted -- not simply into an alleged break-in -- but rather into what appears to be a pattern of illegal surveillance including illegal entry by law enforcement agencies. We would also appreciate information regarding any electronic surveillance. Such an investigation should also include any evidence of electronic surveillance of the Institute, its officers, or employees [illegible] associated with the organization.

Because this matter may well transcend jurisdictional lines, a similar letter is being sent to the Chief of Police, Washington, D. C.

Sincerely,

Mitchell Rogovin

cc: Hon. Robert Kastenmeier

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

(71)4-316

AFFIDAVIT OF ROBERT N. WALL

I, Robert N. Wall, being duly sworn, depose and say on the basis of my own knowledge:

1. I am currently a resident of Buffalo, New York.

2. During the period 1965-1970, I was a Special Agent for the Federal Bureau of Investigation, and during the period 1967-1970, I was assigned to the Washington, D. C. Field Office of the F.B.I. During that time, it came to my attention that records of banks in the Washington, D. C. area could be obtained for the purposes of our investigation. My understanding is that these records were obtained by a special agent in the Washington, D. C. Field Office who had developed relations with various officers and employees of banks in this area. These banking records were not obtained through any legal procedures (eg. Grand Jury subpoenas or otherwise), but as an accommodation to the F. B. I.

3. I, as well as other agents investigating the so-called "new left" and "black" organizations, were able to obtain the banking records we were interested in by requesting them from the agent on this detail. It was in this context that I saw the banking records of the Institute for Policy Studies, during the period 1968-1970.

4. By banking records of the Institute for Policy Studies, I mean a list of checks issued by IPS showing check number, date of issuance, maker, payee, and endorser, if any, with respect to the Institute for Policy Studies account in the Riggs National Bank in Washington, D. C.

EXHIBIT D

5. While the checks written by the Institute for Policy Studies were routinely obtained, the F.B.I. was also able, on special request, to obtain comparable information with respect to IPS account of deposits made in Riggs National Bank.

6. In addition to the financial records of IPS, the F.B.I. was able to secure in similar fashion the financial records of The New School for Afro-American Thought, The Drum and Spear Bookstore, the Center for Black Education, and those of selected individuals, including Stokely Carmichael and Jean Hughes.

Then personally appeared before me the above-named ROBERT N. WALL and made oath that the foregoing statements subscribed by him are true.

Robert N. Wall

Robert N. Wall

12/16/71

Date

Bella Greene

Notary Public

My Commission expires:

BELLA GREENE
Notary Public, State of New York
No. 24-4354213
Qualified in Kings County
Commission Expires March 30, 1973

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant Terry T. O'Connor for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted, and it is further

ORDERED that judgment be entered in favor of defendant Terry T. O'Connor.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant Terry T. O'Connor For Judgment On the Pleadings and accompanying Memorandum and Order.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1624 Crescent Place, N.W.
Washington, D.C. 20009

Anne Pilsbury, Esquire
17 Danforth Street
Norway, Maine 04268

Laura Bonn, Esquire
Assistant Corporation Counsel
District Building
14th & E Streets, N.W.
Washington, D.C. 20004

Daniel Schember, Esquire
Gaffney, Anspach, Schember,
Klimask & Marks, P.C.
1712 N Streets, N.W.
Washington, D.C. 20036

David H. White

DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

RECEIVED SEP 19

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION BY DEFENDANT GEROULD PANGBURN FOR JUDGMENT ON THE PLEADINGS

Defendant Gerould Pangburn, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Pangburn relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendant
Gerould Pangburn

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

ORDER

This cause having come before the court on motion by defendant Gerould Pangburn for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defenant Gerould Pangburn.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT GEROULD PANGBURN FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced on July 16, 1976. Gerould Pangburn was added as a defendant by the Amended Complaint filed December 7, 1977. During a portion of the time pertinent to the subject matter of this action, defendant Pangburn was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C. Field Office. Defendant Pangburn moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

The Amended Complaint makes no specific allegation against defendant Pangburn. No specific act or occurrence is alleged. The claims against defendant Pangburn are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Pangburn, served discovery requests on plaintniffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, only plaintiffs Waskow, Eaton, Hobson, and Booker provided responses implicating defendant Pangburn.*/

The interrogatory to each plaintiff was the following:**/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Plaintiffs Waskow, Eaton, Hobson, and Booker stated that defendant Pangburn participated in the following act between January 1, 1964, and July 16, 1976:***/

> For purposes of the COINTELPRO--Black Nationalist conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

These plaintiffs also state that between August, 1967, and April, 1971, defendant Pangburn participated in the following acts:****/

---

*/ Plaintiff Sammie Abbott stated in responses that he believed he was entitled to damages from defendant Pangburn; however, he describes no act in which defendant Pangburn was allegedly involved. See plaintiff Sammie Abbott's responses, served April 24, 1981. Having made no claim that defendant Pangburn committed any wrongful act, he is not entitled to damages from him.

**/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

***/ Responses by plaintiff Eaton, No. 1.C.; Plaintiff Hobson, No. 1.C.; Plaintiff Waskow, No. 1.H.; Plaintiff Booker, No. 1.C.

****/ Responses by plaintiff Eaton, No. 1.A.; Plaintiff Booker, No. 1.A.; Plaintiff Hobson, No. 1.A.; Plaintiff Waskow, No. 1.A.

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under te FBI program known as COINTELPRO--Black Nationalist.

Plaintiffs Eaton, Booker, and Waskow also state that defendant Pangburn participated in the following act:*/

> Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--Black Nationalist conspiracy.

In addition to the foregoing, plaintiffs Eaton and Booker state their belief that defendant Pangburn, from January 1, 1964, through an unknown time after 1971, participated in the following act.**/

> For purposes of the COINTELPRO--Black Nationalist conspiracy, and for purposes of a noncriminal domestic intelligence investigation, directing informants acting under false pretenses to influence, disrupt or counteract first amendment activities of the Black United Front.

Plaintiffs Eaton, Booker, Waskow, and Hobson demand substantial damages from defendant Pangburn.***/

A. Plaintiffs' Responses to Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The so-called "acts" described by plaintiffs are noting more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

---

*/ Responses by plaintiff Eaton, No. 1.B.; Plaintiff Booker, No. 1.B.; Plaintiff Waskow, No. 1.D.

**/ Responses by plaintiff Eaton, No. 1.D.; Plaintiff Booker, No. 1.D.

***/ Responses by plaintiffs Eaton, Booker, Hobson, and Waskow, No. 4 and 5.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discover such details, so that their failure to link defendant Pangburn with any specific instance of misconduct and to describe the consequences of such conduct to them constitutes a failure to state a claim against him which entitles them to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

B. The Actions Described By Plaintiffs Do Not State A Cause of Action Upon Which Relief May Be Granted

1. The first allegation quoted above is that information concerning plaintiffs was obtained by informants acting at defendant Pangburn's direction.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> the use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution . . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Sup. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S. 745, 749 (1971).

None of these plaintiffs describes or alleges any act by defendant Pangburn which caused an objective chill of constitutionally protected activities or suppression of protected freedoms, and none describes any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9. The plaintiffs' factual statements regarding their claims against defendant Pangburn are thus insufficient to state a claim upon which relief may be granted.

2. These plaintiffs also state that defendant Pangburn participated in a conspiracy to deprive them of their constitutional rights. Conspiracy alone, however, does not give rise to a cause of action. To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiffs describe no such overt act; consequently the allegation of conspiracy does not state a claim against defendant Pangburn upon which relief may be granted.*/

3. Plaintiffs Eaton, Booker, and Waskow state that defendant Pangburn acquired and kept information concerning their private and first amendment activities. Plaintiffs describe no act and make no allegation indicating that the method of acquisition

*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

violated any legal or constitutional right or that the information was used in any manner to cause them injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peace Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

4. Plaintiffs Booker and Eaton state that defendant Pangburn directed informants to influence, disrupt, or counteract the first amendment activities of the Black United Front. Plaintiffs describe, however, no occasion on which this occurred, how they were injured by it, and how plaintiff Pangburn was connected to it. The allegation is on its face insufficient. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Moreover, defendant Pangburn has specifically denied, under oath, any such activity. At his deposition in this action, defendant Pangburn testified as follows:

Q. Did you ever instruct or direct an informant or any other personage to take any action to disrupt or interfere with the Plaintiffs--any Plaintiffs or any Plaintiffs' activities?

A. No.

Q. Or--or to disrupt or interfere with the activities of any organization with which a Plaintiff might have been involved?

A. No.

Q. To your knowledge, did any informant that you had responsibility for handling engage in activity for the purposes of disrupting an organization's activity or creating dissension or in any other way interfering with the organization's activities?

A. Not to my knowledge.

Q. Did you yourself or through an Agent or informant or any other person, attempt to encourage any Plaintiff to engage in any violent or unlawful action?

A. No.

(Deposition of Gerould Pangburn, March 19, 1981, at 84-85.)

Plaintiffs' general allegations do not refute these denials. See Rule 56(e), Federal Rules of Civil Procedure; Cf. United States v. Stevens, 510 F.2d 1101 (5th Cir. 1975) (General denial of electronic surveillance sufficient where given in response to a general, unsupported allegation.).

Conclusion

For the foregoing reasons, defendant Gerould Pangburn's motion for judgment on the pleadings hsould be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney Genral

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendant
Gerould Pangburn

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion by Defendant Gerould Pangburn For Judgment On The Pleadings and accompanying Memorandum and Order.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1624 Crescent Place, N.W.
Washington, D.C. 20009

Anne Pilsbury, Esquire
17 Danforth Street
Norway, Maine 04268

Laura Bonn, Esquire
Assistant Corporation Counsel
District Building
14th & E Streets, N.W.
Washington, D.C. 20004

Daniel Schember, Esquire
Gaffney, Anspach, Schember,
Klimaski & Marks, P.C.
1712 N Streets, N.W.
Washington, D.C. 20036

David H. White

DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

RECEIVED SEP 19

MOTION BY DEFENDANT EDWARD C. RUDIGER FOR JUDGMENT ON THE PLEADINGS

Defendant Edward C. Rudiger, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Rudiger relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

BROOK HEDGE

DAVID H. WHITE

Attorneys, Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for defendant
Edward C. Rudiger

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant Edward C. Rudiger for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant Edward C. Rudiger.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT EDWARD C. RUDIGER FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced on July 16, 1976. Edward C. Rudiger was added as a defendant by the Amended Complaint filed December 7, 1977. During a portion of the time pertinent to the subject matter of this action, defendant Rudiger was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C. Field Office. Defendant Rudiger moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against defendant Rudiger. No specific act or occurrence is alleged. The claims against defendant Rudiger are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Rudiger, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, only three plaintiffs, Bloom, Abbott, and Waskow, provided responses implicating defendant Rudiger.*/

The interrogatory to each plaintiff was the following:**/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Plaintiff Abbott, Bloom, and Waskow each state that defendant Rudiger committed the following act between January 1, 1964, and July 16, 1976:***/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

These plaintiffs also state that between May, 1968, and April, 1971, defendant Rudiger committed the following acts:****/

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left.

---

*/ Plaintiff Tina Hobson stated in her responses that she believed she was entitled to damages from defendant Rudiger; however, she describes no act in which defendant Rudiger was allegedly involved. See plaintiff Tina Hobson's responses, served April 28 and July 24, 1981. Having made no claim that defendant Rudiger committed any wrongful act, she is not entitled to damages from him.

**/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

***/ Responses by plaintiff Abbott, No. 1.C.; Responses by plaintiff Bloom, No. 1.E.; Responses by plaintiff Waskow, No. 1.H.

****/ Responses by plaintiff Waskow, No. 1.A. and No. 1.D.; Responses by plaintiff Abbott, No. 1.A. and No. 1.B.; Responses by plaintiff Bloom, No. 1.A. and 1.B.

> Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy.

Plaintiffs Bloom, Abbott, and Waskow demand substantial damages from defendant Rudiger.*/

A. Plaintiffs' Responses To Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The so-called "acts" described by plaintiffs are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discover such details, so that their failure to link defendant Rudiger with any specific instance of misconduct and to describe the consequences of such conduct to them constitutes a failure to state a claim against him which entitles them to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

B. The Actions Described By Plaintiffs Do Not State A Cause of Action Upon Which Relief May Be Granted

The first allegation quoted above is that information concerning these plaintiffs was obtained by informants acting at defendant Rudiger's direction.

---

*/ Responses by plaintiff Waskow, No. 4 and 5; Responses by plaintiff Abbott, No. 4 and 5; Responses by plaintiff Bloom, No. 4 and 5.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S 745, 749 (1971).

Plaintiffs Bloom, Abbott, and Waskow do not describe or allege any act by defendant Rudiger which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, nor do they describe any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9. The plaintiffs' factual statements regarding their claims against defendant Rudiger are thus insufficient to state a claim upon which relief may be granted.

Plaintiffs also state that defendant Rudiger participated in a conspiracy to deprive them of their constitutional rights. Conspiracy alone, however, does not give rise to a cause of action. To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to a plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiffs describe no such overt act; consequently the allegation of conspiracy does not state a claim against defendant Rudiger upon which relief may be granted.*/

In addition, plaintiffs state that defendant Rudiger acquired and kept information concerning their private and first amendment activities. Plaintiffs describe no act and make no allegation indicating that the method of acquisition violated any legal or constitutional right or that the information was used in any manner to cause them injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peace Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

Conclusion

For the foregoing reasons, defendant Edward C. Rudiger's motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

DAVID H. WHITE

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Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendant
Robert Feuer

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant Edward C. Rudiger For Judgment On The Pleadings and accompanying Memorandum and Order.

Herb Semmel, Esquire
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David H. White

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RECEIVED SEP 19

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION BY DEFENDANTS DAVID RARITY AND EDWIN WAITE FOR JUDGMENT ON THE PLEADINGS

Defendants David Rarity and Edwin Waite, through their undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, move this Honorable Court for judgment on the pleadings in their favor in that the complaint fails to state a claim against them upon which relief can be granted.

In support of this motion defendants Rarity and Waite rely upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F.C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

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Attorneys for defendants
David Rarity and Edwin Waite

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendants David Rarity and Edwin Waite for judgment on the pleadings in their favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant David Rarity and defendant Edwin Waite.

_____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANTS DAVID RARITY AND EDWIN WAITE FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced against defendant David Rarity on July 16, 1976. Defendant Edwin Waite was added by the Amended Complaint filed on December 7, 1977. During a portion of the time pertinent to the subject matter of this action, defendants Rarity and Waite were Special Agents of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C. Field Office. Defendants Rarity and Waite move for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against them upon which relief may be granted.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against either defendant Rarity or defendant Waite. No specific act or occurrence is alleged. The claims against defendants Rarity and Waite are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs

and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendants Rarity and Waite, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, only two plaintiffs, Bloom and Waskow, provided responses implicating defendants Rarity and Waite.

The interrogatory to each plaintiff was the following:*/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Both plaintiff Bloom and plaintiff Waskow stated that defendants Rarity and Waite committed the following act between January 1, 1964, and July 16, 1976:**/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

No other claims are made against defendants Rarity and Waite.

---

*/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

**/ The responses in which this answer occurs are: Plaintiff Bloom, No. 1.E.; plaintiff Waskow, No. 1.H.

Neither plaintiff Bloom nor plaintiff Waskow demands damages from defendant Rarity or defendant Waite.*/ There being no claim for relief, the claims against these defendants should be dismissed. Rule 8(a)(3), Federal Rules of Civil Procedure.

A. Plaintiffs' Responses To Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause Of Action

The so-called "acts" described by plaintiffs Bloom and Waskow are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against the defendants and fail to do so, the claims are clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discover such details, so that their failure to link defendants Rarity and Waite with any specific instance of misconduct and to describe the consequences of such conduct to them constitutes a failure to state a claim against defendants Rarity and Waite which entitles them to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

---

*/ Responses by plaintiffs Bloom and Waskow, No. 4 and 5. Throughout his responses and supplemental responses to interrogatories, plaintiff Bloom implicates fifteen of the federal defendants in actions which allegedly violated his rights. Six of these defendants are not alleged to have been involved in any action other than that quoted in the text. Plaintiff Bloom seeks damages from none of these six, viz., Robert Feuer, Charles Sawyer, Peter Gulotta, Edwin Waite, David Rarity, and Clarence Kelley.

B. The Actions Described By Plaintiffs Waskow And Bloom Do Not State A Cause Of Action Upon Which Relief May Be Granted

The allegation made by both plaintiff Bloom and plaintiff Waskow is that information concerning them was obtained by informants acting at defendant Rarity's and defendant Waite's direction.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S. 745, 749 (1971).

Neither plaintiff Bloom nor plaintiff Waskow describes or alleges any act by defendant Rarity or defendant Waite which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, and neither describes any

disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9. The plaintiffs' factual statements regarding their claims against defendants Rarity and Waite are thus insufficient to state a claim upon which relief may be granted.

Conclusion

For the foregoing reasons, defendants David Rarity's and Edwin Waite's motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F.C. RUFF
United States Attorney

Brook Hedge
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David H. White
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Telephone: (202) 633-4269

Attorneys for defendants
David Rarity and Edwin Waite

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion by Defendants David Rarity and Edwin Waite For Judgment On The Pleadings and accompanying Memorandum and Order.

Herb Semmel, Esquire
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RECEIVED SEP 1 9

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION BY DEFENDANT CHARLES SAWYER FOR JUDGMENT ON THE PLEADINGS

Defendant Charles Sawyer, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Sawyer relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
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Attorneys for Defendant
Charles Sawyer

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant Charles Sawyer for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant Charles Sawyer.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT CHARLES SAWYER FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced against defendant Charles Sawyer on July 16, 1976. During a portion of the time pertinent to the subject matter of this action, defendant Sawyer was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C., Field Office. Defendant Sawyer moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against defendant Sawyer. No specific act or occurrence is alleged. The claims against defendant Sawyer are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Sawyer, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, only three plaintiffs, Abbott, Bloom, and Waskow, provided responses implicating defendant Sawyer.*/

The interrogatory to each plaintiff was the following:**/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Plaintiffs Abbott, Bloom, and Waskow each state that defendant Sawyer committed the following act between January 1, 1964, and July 16, 1976:***/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

Plaintiffs Abbott and Waskow also state that between May, 1968, and April, 1971, defendant Feuer committed the following acts:****/

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left.

---

*/ Plaintiff Tina Hobson stated in her responses that she believed she was entitled to damages from defendant Sawyer; however, she describes no act in which defendant Sawyer was allegedly involved. See plaintiff Tina Hobson's responses, served April 28 and July 24, 1981. Having made no claim that defendant Sawyer committed any wrongful act, she is not entitled to damages from him.

**/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

***/ Responses by plaintiff Abbott, No. 1.C.; Responses by plaintiff Bloom, No. 1.E.; Responses by plaintiff Waskow, No. 1.H.

****/ Responses by plaintiff Waskow, No. 1.A. and No. 1.D.; Responses by plaintiff Abbott, No. 1.A. and No. 1.B.

> Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy.

Plaintiff Bloom demands no damages from defendant Sawyer.*/ Plaintiffs Abbott and Waskow demand substantial damages from defendant Sawyer.**/

A. Plaintiffs' Response To Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The so-called "acts" described by plaintiffs are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discover such details, so that their failure to link defendant Sawyer with any specific instance of misconduct and to describe the consequences of such conduct to them constitutes a failure to state a claim against him which entitles them to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

---

*/ Responses by plaintiff Bloom, No. 4 and 5. Throughout his responses and supplemental responses to interrogatories, plaintiff Bloom implicates fifteen of the federal defendants in actions which allegedly violated his rights. Six of these defendants are not alleged to have been involved in any action other than that quoted in the text. Plaintiff Bloom seeks damages from none of these six, viz., Robert Feuer, Charles Sawyer, Peter Gulotta, Edwin Waite, David Rarity, and Clarence Kelley.

**/ Responses by plaintiff Waskow, No. 4 and 5; Responses by plaintiff Abbott, No. 4 and 5.

B. The Actions Described By Plaintiffs Do Not State A Cause of Action Upon Which Relief May Be Granted

The first allegation quoted above is that information concerning plaintiffs Abbott, Bloom, and Waskow was obtained by informants acting at defendant Sawyer's direction.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S 745, 749 (1971).

Plaintiffs Abbott, Bloom, and Waskow neither describe nor allege any act by defendant Sawyer which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, nor do they describe any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9. The plaintiffs'

factual statements regarding their claims against defendant Sawyer are thus insufficient to state a claim upon which relief may be granted.

Plaintiffs Abbott and Waskow also state that defendant Sawyer participated in a conspiracy to deprive them of their constitutional rights. Conspiracy alone, however, does not give rise to a cause of action. To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiffs Abbott and Waskow describe no such overt act; consequently their allegation of conspiracy does not state a claim against defendant Sawyer upon which relief may be granted.*/

In addition, plaintiffs Abbott and Waskow state that defendant Sawyer acquired and kept information concerning their private and first amendment activities. Plaintiffs describe no act and make no allegation indicating that the method of acquisition violated any legal or constitutional right or that the information was used in any manner to cause them injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peace Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

Conclusion

For the foregoing reasons, defendant Charles Sawyer's motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

BROOK HEDGE

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Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendant
Charles Sawyer

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant Charles Sawyer For Judgment On The Pleadings and accompanying Memorandum and Order.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1624 Crescent Place, N.W.
Washington, D.C. 20009

Anne Pilsbury, Esquire
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David H. White

DAVID H. WHITE
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Washington, D.C. 20530

RECEIVED SEP 19

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MOTION BY DEFENDANT JOHN STANLEY FOR JUDGMENT ON THE PLEADINGS

Defendant John Stanley, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Stanley relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
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Telephone: (202) 633-4269

Attorneys for Defendant
John Stanley

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant John Stanley for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant John Stanley.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT JOHN STANLEY FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced on July 16, 1976. John Stanley was added as a defendant by the Amended Complaint filed December 7, 1977. During a portion of the time pertinent to the subject matter of this action, defendant Stanley was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C., Field Office. Defendant Stanley moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against defendant Stanley. No specific act or occurrence is alleged. The claims against defendant Stanley are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Stanley, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, six of the plaintiffs provided responses implicating defendant Stanley.*/

The interrogatory to each plaintiff was the following:**/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Plaintiffs Abbott, Bloom, Waskow, Eaton, Washington Peace Center [WPC], and Washington Area Women Strike For Peace [WAWSP] stated that defendant Stanley committed the following act between January 1, 1964, and July 16, 1976:***/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

Plaintiffs Abbott, Bloom, Waskow, and WPC also state that between May, 1968, and April, 1971, defendant Stanley committed the following acts:****/

---

*/ Plaintiff Tina Hobson stated in her responses that she believed she was entitled to damages from defendant Stanley; however, she describes no act in which defendant Stanley was allegedly involved. See plaintiff Tina Hobson's responses, served April 28 and July 24, 1981. Having made no claim that defendant Stanley committed any wrongful act, she is not entitled to damages from him.

**/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

***/ Responses by plaintiff Abbott, No. 1.C.; Plaintiff Bloom, No. 1.E.; Plaintiff Waskow, No. 1.H.; Plaintiff Eaton, No. 1.C.; Plaintiff WPC, No. 1.C.; Plaintiff WAWSP, No. 1.E. The answers differed slightly but were fundamentally the same.

****/ Responses by plaintiff Abbott, No. 1.A. and No. 1.B.; Plaintiff Bloom, No. 1.A. and No. 1.B.; Plaintiff Waskow, No. 1.A. and No. 1.D.; Plaintiff WPC, No. 1.A. and No. 1.B.

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constitutional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left.
>
> Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy.

Plaintiff WAWSP makes substantially the same allegations, except it alleges the acts occurred from January 1, 1964, through April, 1971.*/ Plaintiffs demand substantial damages from defendant Stanley.**/

A. Plaintiffs' Responses To Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The so-called "acts" described by plaintiffs are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiffs have had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fail to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiffs have now had, however, full opportunity to discover such details, so that their failure to link defendant Stanley with any specific instance of misconduct and to describe the consequences of such conduct to them constitutes a failure to state a claim against him which entitles them to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

*/ Responses by plaintiff WAWSP, No. 1.A. and No. 1.B.

**/ Responses by plaintiffs Abbott, Bloom, Waskow, Eaton, WPC, and WAWSP, No. 4 and 5.

B. The Actions Described By Plaintiffs Do Not State A Cause of Action Upon Which Relief May Be Granted

The first allegation quoted above is that information concerning these plaintiffs was obtained by informants acting at defendant Stanley's direction.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiffs do not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S 745, 749 (1971).

None of the plaintiffs describe or allege any act by defendant Stanley which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, and none describes any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979,

at 8-9. The plaintiffs' factual statements regarding their claims against defendant Stanley are thus insufficient to state a claim upon which relief may be granted.

These plaintiffs, except plaintiff Eaton, also state that defendant Stanley participated in a conspiracy to deprive each of them of constitutional rights. Conspiracy alone, however, does not give rise to a cause of action. To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to a plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiffs describe no such overt act; consequently their allegation of conspiracy does not state a claim against defendant Stanley upon which relief may be granted.*/

In addition, these plaintiffs, except plaintiff Eaton, state that defendant Stanley acquired and kept information concerning their private and first amendment activities. Plaintiffs describe no act and make no allegation indicating that the method of acquisition violated any legal or constitutional right or that the information was used in any manner to cause them injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peace Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

Conclusion

For the foregoing reasons, defendant John Stanley's motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

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Telephone: (202) 633-4269

Attorneys for Defendant
John Stanley

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant John Stanley For Judgment On The Pleadings and accompanying Memorandum and Order.

Herb Semmel, Esquire
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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

RECEIVED SEP 19 1981

MOTION BY DEFENDANT ROBERT YATES FOR JUDGMENT ON THE PLEADINGS

Defendant Robert Yates, through his undersigned counsel and pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, moves this Honorable Court for judgment on the pleadings in his favor in that the complaint fails to state a claim against him upon which relief can be granted.

In support of this motion defendant Yates relies upon the record of this action and the attached memorandum of points and authorities.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
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David H. White
DAVID H. WHITE

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Attorneys for defendant
Robert Yates

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This cause having come before the Court on motion by defendant Robert Yates for judgment on the pleadings in his favor, and the Court being fully advised in the premises, it is this _____ day of September, 1981,

ORDERED that the motion be, and hereby is, granted and, it is further

ORDERED that judgment be entered in favor of defendant Robert Yates.

_____

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY DEFENDANT ROBERT YATES FOR JUDGMENT ON THE PLEADINGS

This civil action was commenced against defendant Robert Yates on July 16, 1976. During a portion of the time pertinent to the subject matter of this action, defendant Yates was a Special Agent of the Federal Bureau of Investigation assigned to the Bureau's Washington, D.C. Field Office. Defendant Yates moves for judgment on the pleadings on grounds that the Amended Complaint, as elucidated by plaintiffs' responses to discovery, fails to state a claim against him upon which relief may be granted.

Argument

Neither the Complaint nor the Amended Complaint makes any specific allegation against defendant Yates. No specific act or occurrence is alleged. The claims against defendant Yates are included within all the claims against the defendants affiliated with the FBI and consist of allegations that certain categories of activities affecting the plaintiffs occurred from 1968 to 1973:

(1) using undercover agents to fraudulently gain entry to private meetings to learn the plans and programs of plaintiffs; (2) electronic surveillance without judicial authorization; (3) breaking and entering to obtain membership lists and other private political documents; (4) mail interception; (5) physical surveillance, that is, surreptitiously following plaintiffs and monitoring plaintiffs' political activities by (a) urging violent or unlawful actions and (b) supplying the public and/or news media with false information about the plaintiffs and their plans. [Amended Complaint, ¶¶27-29].

On January 22, 1981, the federal defendants, including defendant Yates, served discovery requests on plaintiffs requiring each of them to describe each act which caused an injury, to describe the injury, and to state the name of each defendant who committed, supervised, or directed the commission of the act.

In answering the discovery demands, only plaintiff Waskow provided responses implicating defendant Yates.*/

The interrogatory to each plaintiff was the following:**/

> Please describe each act which caused you injury, and with respect to each such act state (a) the date and place it occurred; (b) the name of the defendant who committed the act, and (c) the name of the defendant who supervised or directed the commission of the act.

Plaintiff Waskow stated that defendant Yates committed the following act between January 1, 1964, and July 16, 1976:***/

> For purposes of the COINTELPRO--New Left conspiracy, and a noncriminal domestic intelligence investigation, to an extent exceeding that necessary for valid investigative purposes, directing informants acting under false pretenses to acquire from me, my associates, or my or our materials or premises, and receiving from those informants, and keeping, information concerning my private and first amendment activities that could not have been so acquired had the informants' true identities and purposes been known to me or my noninformant associates.

Plaintiff Waskow also states that between May, 1968, and April, 1971, defendant Yates committed the following acts:****/

> Conspiracy to interfere with, or deprive me of, my first, fourth, and fifth amendment rights, my constituttional and common law rights of privacy, and my common law property rights, under the FBI program known as COINTELPRO--New Left.

---

*/ Plaintiffs Sammie Abbott and Tina Hobson stated in their responses that they believed they were entitled to damages from defendant Yates; however, neither of them describes any act in which defendant Yates was allegedly involved. See plaintiff Sammie Abbott's responses, served April 24, 1981, and plaintiff Tina Hobson's responses, served April 28 and July 24, 1981. Having made no claim that defendant Yates committed any wrongful act, they are not entitled to damages from him.

**/ Part II, Interrogatory No. 1, Request for Admission and Interrogatories to Plaintiffs by Federal Defendants, served January 22, 1981.

***/ Responses by plaintiff Waskow, No. 1.H.

****/ Responses by plaintiff Waskow, No. 1.A. and No. 1.D.

> Acquiring and keeping information concerning my private and first amendment activities for purposes of the COINTELPRO--New Left conspiracy.

Plaintiff Waskow demands substantial damages from defendant Yates.*/

A. Plaintiff's Response To Interrogatories Do Not Describe Acts In Sufficient Detail To State A Cause of Action

The so-called "acts" described by plaintiff Waskow are nothing more than general allegations which would not state a cause of action if set forth in a pleading. See Dorothy K. Winston & Co. v. Town Heights Development, Inc., 376 F. Supp. 1214, 1217 (D.D.C. 1974) (Green, J.); and Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980). Where, as in this instance, plaintiff has had the opportunity and the obligation to set forth with particularity the nature of the action against a defendant and fails to do so, the claim is clearly insufficient.

In the Memorandum Opinion of November 9, 1979, this Court observed:

> Without the discovery necessary to uncover at least some of the details of alleged surreptitious activity, the plaintiffs at the time the original complaint was filed lacked the information necessary to link individual defendants with specific instances of alleged illegal conduct.

(Slip Opinion, at 4). Plaintiff Waskow has had, however, full opportunity to discover such details, so that his failure to link defendant Yates with any specific instance of misconduct and to describe the consequences of such conduct to him constitutes a failure to state a claim against defendant Yates which entitles him to relief. See Glaros v. Perse, 628 F.2d 679 (1st Cir. 1980); Landrigan v. City of Warwick, 628 F.2d 736, 744-45 (1st Cir. 1980).

B. The Actions Described By Plaintiff Waskow Do Not State A Cause of Action Upon Which Relief May Be Granted

The first allegation made by plaintiff Waskow is that information concerning him was obtained by informants acting at defendant Yate's direction.

*/ Responses by plaintiff Waskow, No. 4 and 5.

The use of informants by law enforcement authorities is not itself actionable and does not trench upon any rights guaranteed by the Constitution of the United States. As at least one court has recognized in the context of civil litigation,

> The use of secret informers or undercover agents is a legitimate and proper practice of law enforcement--indeed, without the use of such agents many crimes would go unpunished and wrongdoers escape prosecution. . . . The use of informers and infiltrators by itself does not give rise to any claim of violation of constitutional rights.

Handschu v. Special Services Division, 349 F. Supp. 766, 769 (S.D.N.Y. 1972) (emphasis supplied). Similarly, the United States Court of Appeals for the Second Circuit has noted that

> the FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obligated to wear blinders until it may be too late for prevention.

Socialist Workers Party v. Attorney General, 510 F.2d 253, 256 (2nd Cir. 1974).

In the absence of specific incidents of misconduct, plaintiff Waskow does not state a cause of action relating to the alleged use of informants. Surveillance by informants, whether overt or covert, does not violate any constitutional rights. Berlin Democratic Club v. Rumsfeld, 410 F. Supp. 144, 153-54 (D.D.C. 1976), remanded on other grounds, No. 76-1647, decided March 19, 1979 (D.C. Cir.). See Hoffa v. United States, 385 U.S. 293, 311 (1966); United States v. White, 401 U.S 745, 749 (1971).

Plaintiff Waskow neither describes nor alleges any act by defendant Yates which caused an objective chill of constitutionally protected activity or suppression of protected freedoms, nor does he describe any disruptive act designed to defeat the exercise of free speech and assembly rights. See Memorandum Opinion, November 9, 1979, at 8-9. The plaintiff's factual statements regarding his claims against defendant Yates are thus insufficient to state a claim upon which relief may be granted.

Plaintiff Waskow also states that defendant Yates participated in a conspiracy to deprive him of his constitutional rights. Conspiracy alone, however, does not give rise to a cause of action.

To state a claim alleging a civil conspiracy, there must be an overt act in furtherance of the conspiracy which caused actual injury to plaintiff's person or property or deprived the plaintiff of having and exercising any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971); Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979). Plaintiff Waskow describes no such overt act; consequently his allegation of conspiracy does not state a claim against defendant Yates upon which relief may be granted.*/

In addition, plaintiff Waskow states that defendant Yates acquired and kept information concerning his private and first amendment activities. Plaintiff describes no act and makes no allegation indicating that the method of acquisition violated any legal or constitutional right or that the information was used in any manner to cause him injury. This "act", therefore, does not state a cause of action upon which relief may be granted. Fifth Avenue Peace Parade v. Gray, 480 F.2d 326, 332 (2nd Cir. 1973); Landrigan v. City of Warwick, 628 F.2d 736, 744 (1st Cir. 1980).

Conclusion

For the foregoing reasons, defendant Robert Yates' motion for judgment on the pleadings should be granted.

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

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Attorneys for defendant
Robert Yates

*/ Plaintiffs satisfy none of the necessary elements to state a claim under 42 U.S.C. § 1985(3), which is alleged to be the basis for their conspiracy claims against defendants. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971).

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion By Defendant Robert Yates For Judgment On The Pleadings and accompanying Memorandum and Order.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1624 Crescent Place, N.W.
Washington, D.C. 20009

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Washington, D.C. 20036

David H. White

DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

Motion by Federal Defendants for Judgmt on the Pleadings

[taken out by A.P. - 6-22-83]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiff,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION TO EXTEND TIME IN WHICH TO FILE OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiffs move this Court to extend the time in which to file their opposition to the Federal Defendants' motion for summary judgment, from October 2, 1981 to and including October 5, 1981. In support of this motion plaintiffs rely upon the attached memorandum. Federal defendants neither support nor oppose this motion.

Respectfully submitted,

S. E. McNeil

J. E. McNeil
Gaffney, Anspach, Schember,
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1712 N Street, N.W.
Washington, D.C. 20036
(202) 223-9274

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
MOTION TO EXTEND TIME IN WHICH TO
FILE OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

Plaintiffs lead counsel has been out of town on other business since before counsel received the motion. Although plaintiffs' counsel have tried to use the mails and telephones to complete the opposition, that process has necessarily delayed the completion of the opposition. Plaintiffs' lead counsel will not return until October 10, 1981.

Wherefore, plaintiffs' pray that their motion be granted.

Respectfully submitted,

J. E. McNeil
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Washington, D.C. 20036
(202) 223-9274

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

Upon consideration of plaintiffs motion to extent the time in which their opposition to the Federal defendants' motions for summary judgment and it appearing that such motion should be granted, it is this _____day of _____, 1981

ORDERED that plaintiffs' motion be and hereby is granted and that plaintiffs shall have up to and including October 5, 1981 to file their opposition to Federal defendants' motions for summary judgment.

_____
JUDGE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Extend Time in Which to File Opposition to Motion for Summary Judgment and Memorandum in Support of was mailed postage prepaid to David White, Department of Justice, Washington, D.C. 20530 and Laura Bonn, Assistant Corporation Counsel, District Building, 14th & E Streets, N.W., Washington, D.C. 20004 this 24th day of September, 1981.

J. E. McNeil

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,
Plaintiffs,
v.
JERRY WILSON, et al.,
Defendants.

Civil Action No. 76-1326

FILED
SEP 30 1981
JAMES F. DAVEY, CLERK

ORDER

Upon consideration of plaintiffs motion to extent the time in which their opposition to the Federal defendants' motions for summary judgment and it appearing that such motion should be granted, it is this 30th day of September, 1981

ORDERED that plaintiffs' motion be and hereby is granted and that plaintiffs shall have up to and including October 5, 1981 to file their opposition to Federal defendants' motions for summary judgment.

Louis F. Oberdorfer
JUDGE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,
Plaintiffs,
v.
JERRY WILSON, et al.,
Defendants.

Civil Action No. 76-1326

FILED
OCT 6 1981
JAMES F. DAVEY, CLERK

ORDER

The Court has under advisement motions by plaintiffs to compel responses to interrogatories and document requests directed to the federal and District of Columbia defendants. Accordingly, it is this 6th day of October 1981 hereby

ORDERED: that a hearing on pending motions to compel responses to interrogatories and document requests be held on October 14, 1981 at 2:00 p.m.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RECEIVED OCT 9 1981

JULIUS HOBSON, et al. :

Plaintiffs :

v. : Civil Action No. 76-1326

JERRY WILSON, et al. :

Defendants :

MOTION OF DISTRICT OF COLUMBIA DEFENDANTS FOR AN EXTENSION OF TIME WITHIN WHICH TO RESPOND TO PLAINTIFFS THIRTEENTH AND FOURTEENTH SETS OF INTERROGATORIES

The District of Columbia defendants respectfully move this Court for an extension of time within which they may respond to plaintiff's thirteenth and fourteenth sets of Interrogatories from October 9, 1981, up to and including October 16, 1981. As grounds therefor counsel for defendants asserts that counsel for the Metropolitan Police Department who collected information and answers to these Interrogatories has not yet been able to locate the information necessary to prepare appropriate and complete responses.

Judith W. Rogers /s/

JUDITH W. ROGERS
Corporation Counsel, D.C.

John H. Suda /s/

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn

LAURA W. BONN
Assistant Corporation Counsel, D.C.
Attorneys for Defendant District of Columbia
District Building
Washington, D.C. 20004
727-6348

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of District of Columbia Defendants for an Extension of Time Within Which to Respond to Plaintiffs Thirteenth and Fourteenth

Sets of Interrogatories, together with Memorandum of Points and Authorities and Order was mailed, postage prepaid, to Daniel Schember, Esq., 1712 N Street, N.W., Washington, D.C. and Herb Semmel, Esq., 1624 Crescent Place, N.W., Washington, D.C. 20009, and David White, Attorney for Department of Justice, Washington, D.C. 20530, this 9th day of October, 1981.

Laura W. Brown

Assistant Corporation Counsel, D.C.
Attorney for Defendant District of Columbia
District Building
Washington, D.C. 20004

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF DISTRICT OF COLUMBIA DEFENDANTS FOR AN EXTENSION OF TIME WITHIN WHICH TO RESPOND TO PLAINTIFFS THIRTEENTH AND FOURTEENTH SETS OF INTERROGATORIES

Federal Rules of Evidence 6(b).

Judith W. Rogers /LWB
JUDITH W. ROGERS
Corporation Counsel, D.C.
John H. Suda /LWB
JOHN H. SUDA
Deputy Corporation Counsel, D.C.
Laura W. Bonn
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Assistant Corporation Counsel, D.C.
Attorney for Defendant District of Columbia
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Washington, D.C. 20004

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al. :

Plaintiffs :

v. : Civil Action No. 76-1326

JERRY WILSON, et al. :

Defendants :

ORDER

This matter is before the Court on the motion of the District of Columbia defendants for an extension of time within which to respond to plaintiffs thirteenth and fourteenth sets of Interrogatories up to and including October 16, 1981. Upon consideration of the motion, the points and authorities filed in support thereof and the entire record herein, it is, by the Court this _____ day of _____, 1981,

ORDERED: That the motion of District of Columbia defendants for an extension of time be, and the same is, hereby granted; and, it is,

FURTHER ORDERED: That the District of Columbia defendants have up to and including October 16, 1981, to respond to plaintiffs thirteenth and fourteenth sets of Interrogatories.

_____
JUDGE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

RENEWAL OF ORAL MOTION FOR
ORDER COMPELLING DISCOVERY

Plaintiffs hereby renew their oral motion to compel discovery from deponent Melvin Winkelman of the documents identified in plaintiffs' subpoena to him. Plaintiff's oral motion was made in open court during Mr. Winkleman's deposition on August 14, 1981.

In support of this motion plaintiffs rely on the accompanying memorandum.

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Anne Pilsbury
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Norway, Maine 02468
(207) 925-1144

J. E. McNeil

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Herb Semmel
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Attorneys for Plaintiffs

Of Counsel:

Arthur Spitzer
Executive Director
American Civil Liberties
Union Fund of the
National Capital Area
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600 Pennsylvania Ave., S.E.
Washington, D.C. 20003
(202) 544-1076

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF
RENEWAL OF ORAL MOTION FOR
ORDER COMPELLING DISCOVERY

In their subpoena to deponent Melvin Winkelman plaintiffs directed him to produce documents pertaining to a Metropolitan Police Department internal investigation of alleged wrong doing by the department's Intelligence Division. Deponent Winkelman produced ~~on~~ no documents and plaintiffs moved to compel their production in open court during the course of the deposition.

At the hearing on the motion the court approved the following resolution of the matter:

(1) Plaintiffs were to be provided the summary report of deponent Winkelman's investigation; and

(2) Regarding Charles Robinson, Charles J. Marcum, Ed Spiker, Tom Okeson, and Jack Acree, plaintiffs were to be provided either

(a) Transcripts of their testimony taken during the course of deponent Winkelman's investigation; or

(b) Their current residential and business addresses, if within reasonable distance of Washington, D.C.

The above materials were to have been produced without deletions purported to be made on grounds of relevance. Furthermore, the option given defendants to provide local addresses in lieu of prior testimony contemplated that provision of this information would be prompt so that depositions could be scheduled. Despite phone calls from counsel for plaintiffs to counsel to deponent Winkelman (who is also counsel for the District of

Columbia defendants), none of the documents or addresses has been produced. Due to defendants counsel's failure to comply with any part of the agreed resolution reached August 14, plaintiffs renew their motion for discovery of all documents encompassed within plaintiffs subpoena of deponent Winkelman. At this late date, depositions of selected persons is no longer an adequate substitute for the subpoenaed documents.

Respectfully submitted,

Anne Pilsbury
Anne Pilsbury
17 Danforth Street
Norway, Maine 02468
(207) 925-1144

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Attorneys for Plaintiffs

Of Counsel:

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Executive Director
American Civil Liberties
Union Fund of the
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(202) 544-1076

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter having come before the Court on plaintiffs Renewal of Oral Motion for Order Compelling Discovery, and it appearing that this motion should be granted, it is this _____ day of _____, 1981

ORDERED that plaintiffs motion is granted and plaintiffs shall be provided within _____ days all documents encompassed within their subpoena to Melvin Winkelman.

_____
UNITED STATES DISTRICT JUDGE

Certificate of Service

I certify that a copy of the foregoing Renewal of Oral Motion for Order Compelling Discovery, supporting memorandum, and accompanying proposed order, was personally served this 13th day of October, 1981 on Laura Bonn, Assistant Corporation Council, 14th & E Streets, N.W., Washington, D.C. 20004 and David H. White, Civil Division, Department of Justice, Washington, D.C. 20530.

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULUIS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 14th day of October, 1981 from the deposition of John Harding held at 2111 Florida Avenue, N.W., Washington, D.C. on July 23, 1981:

Number of tapes of deposition: 2

Number of exhibits: 0

J. E. McNeil

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULUIS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 14th day of October, 1981 from the deposition of Roger A. Johnson held at 1712 N Street, N.W. on August 11, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

S. E. McNeil

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT FO COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 14th day of October, 1981 from the deposition of Jerry V. Wilson held at 1712 N Street, N.W. on August 3, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 14th day of October, 1981 from the deposition of Fred Raines held at the United States Courthouse for the District of Columbia, 3rd & Constitution, N.W., Washington, D.C. on August 14, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 14th day of October, 1981 from the deposition of Thomas J. Deakin held at 2111 Florida Avenue, N.W., Washington, D.C. on July 28, 1981:

Number of tapes of deposition: 1

Number of exhibits: 4

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 14th day of October, 1981 from the deposition of Blanco Drummond held at 1712 N Street, N.W., Washington, D.C. on August 12, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 14th day of October, 1981 from the deposition of Paul A. Chesser held at 1712 N Street, N.W., Washington, D.C. on August 11, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

S. E. McNeil

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(202) 223-9274

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notices of Filing of tapes and exhibits of the depositions of Harding, Johnson, Wilson, Raines (August 14, 1981), Deakin, Drummond, and Chesser was sent to David White, Civil Division, Department of Justice, Washington, D.C. 20530 and Laura Bonn, Assistant Corporation Council, District Building, 14th & E Streets, N.W., Washington, D.C. 20004 this 14th day of October, 1981.

S. E. McNeil

J. E. McNeil